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Managing Editor's Comments

Welcome to volume 5, number 1, the winter/spring 2018 issue of *JTMS*. As always, *JTMS* aims at bringing you interdisciplinary discussions on territorial and maritime issues. In this issue, there are five research articles. Each of these articles provides timely discussion of a variety of topics for those who research international issues on land and at sea. In this issue especially, we offer scholarly articles on issues from around the world including Central and South America, Northeast Asia, and the South China Sea.

First, Nuno Morgado analyzes Brazil's geopolitical design and, at the same time, brings us an empirical test to the concept of *geomisguidance*. Starting with the assumption that Brazil can be assessed as a maritime country, he argues that the South American integration maneuver, which is Brazil's priority in terms of geopolitical design, stands in opposition to a grand strategy of Brazil as a *seapower*. Second, Horia Ciurtin reconceptualizes the underlying tenets of Westphalian links between sovereignty and territoriality, showing how an "exported" Eurocentric doctrine actually functions in a distinct legal environment—post-imperial China—and the manner in which a protracted political-ontological dispute can or cannot make use of established Western-based legal mechanisms. By focusing on the cross-strait dilemma of overlapping claims to sovereignty upon a "greater" China—advanced both by the People's Republic of China and the Republic of China (Taiwan)—Horia Ciurtin attempts to show how volatile (and fragile) the functionality of Westphalia actually is. Third, Krista E. Wiegand questions how leaders choose to divert the populace's attention from domestic problems to foreign disputes and whether there are peaceful options to pursue diversion rather than use of force. Building on diversionary force theory and foreign policy substitutability, she tackles the continuing debate about how domestic unrest could lead to diversions and what constitutes diversionary behavior. The theory presented is that leaders of states claiming disputed territory can use demands for peaceful dispute resolution (negotiation, mediation, etc.) to divert attention from moderate domestic unrest, initiating a militarized interstate dispute (MID) in the territorial dispute more likely to occur under severe domestic unrest, and economic unrest has no effect. Fourth, Dennis V. Hickey examines the South China Sea as one of the most disputed areas of sea in the world. He compares and contrasts the approaches and strategies adopted by the Republic of China (Taiwan) during the administrations of President Ma Ying-jeou and President Tsai Ing-wen toward the regional quarrel. He also employs primary source data, including government documents, media accounts, scholarly publications and even interviews

with former President Ma Ying-jeou. This background makes him arguably the region's foremost expert on Taiwan's claims to the South China Sea. Finally, Enyu Zhang and Yitan Li explore how the recent development in the territorial and maritime disputes in the South China Sea has affected the relations across the Taiwan Strait and identify what options and prospects there may be for both sides to move forward on the South China Sea disputes? They examine the maritime disputes in the South China Sea and the implications of the recent Permanent Court of Arbitration ruling on the relations between the People's Republic of China (PRC) and the Republic of China (ROC) on Taiwan. Their findings suggest that both the PRC and ROC have almost identical claims over the disputes in the South China Sea and there could be a window of opportunity to enhance the political cooperation across the Taiwan Strait.

As always, the editorial team of *JTMS* is grateful to our readers for your continued support and interest in our journal and subject area. We wish you a bright start and continued success in 2018.

Lonnie Edge
Managing Editor

Analysis of Brazil's Geopolitical Design: Prioritizing the South American Regional Integration Maneuver

Nuno Morgado

Structured Abstract

Article Type: Research Paper

Purpose—This paper lays out an empirical analysis of Brazil's geopolitical design and, at the same time, comprises an empirical test to the concept of *geomisguidance*. Starting with the assumption that Brazil can be assessed as a maritime country, the paper argued that the South American integration maneuver, which is Brazil's priority in terms of geopolitical design, stands in opposition to a grand strategy of Brazil as a *sea power*.

Approach—Neoclassical geopolitics welded with elements from the neoclassical realist theory provided the theoretic-methodological framework used in the research.

Findings—As for findings, besides testing a new concept (*geomisguidance*), the paper concluded that (1) Brazil's priority, in terms of geopolitical design, has been the South American integration indeed, that (2) despite the fact that the relative material state potential of Brazil has been fairly high and that the systemic constraints have been permissive to changes on the international chessboard, Brazil has not been able to increase its influence on the international arena, and that (3) that is a result of the positioning of Brazilian *élites'* deviation from the national interests.

Originality—In this context, the paper constitutes an empirical research piece,

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devoted to explaining the foreign policy outcomes in Brazil, with a special attention to the international system.

Keywords: Brazil, *élites*, foreign policy, Latin American integration, Workers' Party

Introduction

It has been explained by the author elsewhere that the continentalization “strategy” was a misguided prescription of Brazilian School of Geopolitics (Travassos,¹ somewhat Couto e Silva,² but mainly Meira Mattos³). It was considered a misguided prescription because, in that context, the argument that Brazil can be accurately assessed as a “maritime country” was pushed forward. Among the deductions from that argument were (1) the necessity of the development of the Navy, and (2) the maintenance of the alliance between Brazil and the U.S.A.⁴

This paper will now measure the impact of that misguided prescription of continentalization “strategy” on Brazilian politics, performing an empirical test.

The empirical puzzle—*to what extent can the South American integration, as a priority of Brazil's geopolitical design, be perceived as “anti-national politics”?*—will guide the research. This means that the main point is then to gather, to present and to analyze evidence with the objective of sustaining the argument that the South American regional integration maneuver (a *geoconjunctive* process) has been conducted by the Brazilian *élites* from an anti-national dynamics. Therefore, the paper will also introduce the notion that Brazil has been, during Workers' Party [*Partido dos Trabalhadores*] administration (2003–2016), a *geomisguided* state, due to Brazilian *élites'* *geomisguided* perceptions and incapacities.

In order to develop that argument, three sections will be structured. Section I will be devoted to the independent variables “relative material state potential of Brazil” and “systemic constraints.” Section II will comprise the intervening variables “*élites'* perceptions and *élites'* capacities.” Finally, section III will focus on the analysis of Brazil's geopolitical design *tout court*.

The compactness of the methodology will be assured both (1) by the deductive logic, i.e., from geopolitical concepts to the empirical political reality, and (2) by the framework of geopolitical studies (or neoclassical geopolitics), which includes elements of the neoclassical realist theory (particularly the variables which were just mentioned above).

A closing memo in this introduction goes to the definition of central concepts used in the paper. While (1) “geopolitical design” means the identification of both the list of state's goals and its hierarchy (i.e., research on diplomatic, military and intelligence/secret services sources)⁵; (2) “*élites*” [in the original French] must be understood as the “foreign policy executive,” or the “state” from an instrumental perspective, i.e., “the top officials and central institutions of government charged with external defense and the conduct of diplomacy.”⁶ Finally, the innovative concept

of “*geomisguidance*,” created by the author, refers to one specific classification of the sense of space [*Raumsinn*] that the *élites* have about the geographical setting’s incentives or possibilities—a negative classification that names misguided perceptions.

Analyzing Brazil Through the Independent Neoclassical Realist Variables

The analysis will follow the guidelines of the model of geopolitical factors developed in other works.⁷

Starting with the variable of relative material state potential, it is important to underline [Space—geopolitical factor #1] that Brazil is the 5th largest country in the world, occupying 45 percent of South American sub-continent. Slightly smaller than the U.S.A., Brazil has borders with all South American countries except with Ecuador and Chile, in a total of 16,145 km of land borders (much longer than Brazil’s coastline). After Greenland, Brazil has the largest coastline on the Atlantic (more extensive than the U.S. east coastline) with 7,491 km.⁸

As Travassos noted, South America is divided in North/South by the Amazon forest around the Amazon River, and East/West by the Andean mountains.⁹ These two geographical features complicate the circulation in the region [geopolitical factor #3], consequently turning regional integration hard to achieve in geographical terms.

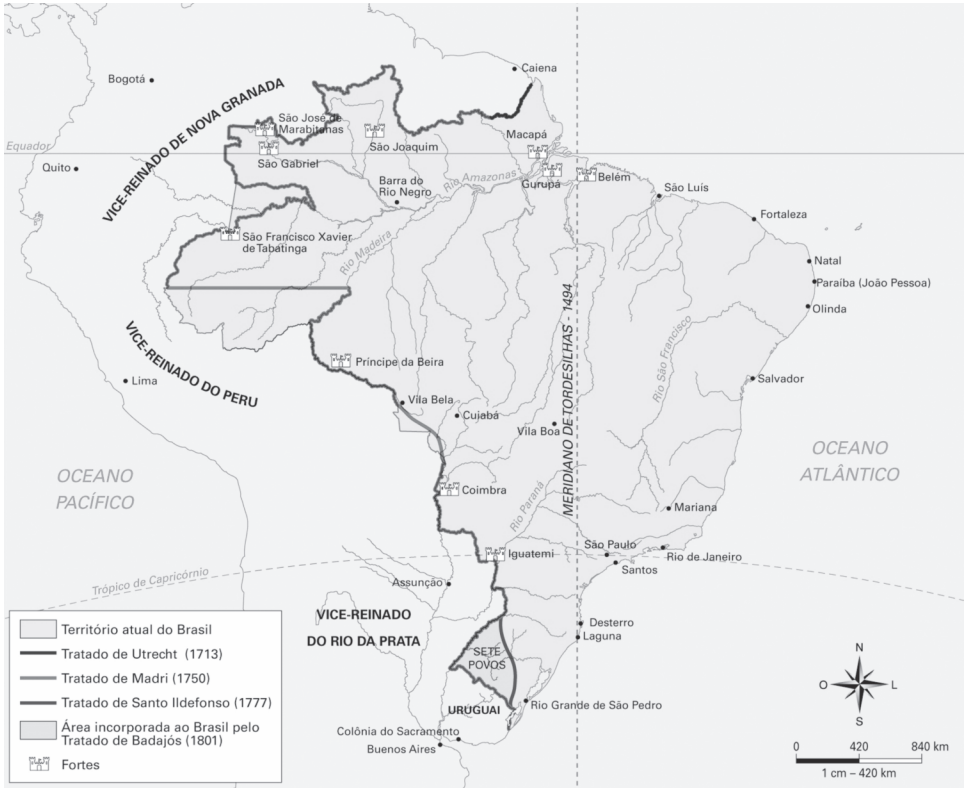
If it is hard to connect the coast to the interior, it is likewise hard to connect Brazilian cities along the coastline due to specific geographical features (e.g., mountains).

The fact that South American integration has been pursued by ideological guidelines cannot eliminate these difficulties presented by geography.

Inside the Brazilian territory, the problem of territorial integration remains. There is a severe lack of internal territorial cohesion, so it is easily understandable why this was a key point for the Brazilian School of Geopolitics. In the Amazon basin, there is no relevant agriculture, no large human settlements, and the area is hard to control in security terms. Moreover, the creation of territorial reserves (mainly by the *Workers’ Party* administration)—which is linked to transnational interests—have been worsening a critical risk of appearance of exclaves inside Brazil, jeopardizing the country’s territorial integrity. This topic will be covered below.

On the other hand, Brazilian highlands on the coast—an area that corresponds to Brazil’s geohistorical nucleus [cf. map 1]—comprise the majority of the population and the country’s richest areas (including the state’s ecumene: the triangle Rio de Janeiro-São-Paulo-Belo Horizonte). Yet, as it was already pointed out, it is hard to circulate in this area too.

Concerning the Position [geopolitical factor #2] it assumes particular importance the city of Natal (e.g., Rampa, Fernando de Noronha Island), in the Northeast region, since the air bases located there were essential to the U.S. Air Force in the



Map 1. Brazil's geohistorical nucleus.¹⁰

defeat of Nazi forces in the North of Africa during World War II: the Natal-Dakar air route.

Brazil's archipelagos (e.g., Fernando de Noronha, and Trindade e Martim Vaz) are also essential for maritime power projection.

In terms of regional context, while Bolivia, Paraguay and Uruguay constitute three buffer states around Brazil, Colombian FARC [*Revolutionary Armed Forces of Colombia*] with their activities of drug and arms trafficking, and an unstable Venezuela, represent threats in the neighborhood of the North of Brazil.

Concerning resources [geopolitical factor #4] Brazil is a rich country. Brazil is the 9th biggest producer of oil, and its natural gas reserves were, in 2015, estimated at 16 trillion cubic feet.¹¹ After the U.S.A., Brazil is the second-largest producer and consumer of the biofuel ethanol.¹² The country has two nuclear power plants,¹³ and another one under construction.¹⁴

Brazil possesses 8,233 cubic km of fresh water reserves.¹⁵ The Amazon rainforest provides rubber and extensive reserves of wood. As for metals, Brazil possesses the largest niobium reserve in the world and the second largest reserve of iron (after Australia). The country is self-sufficient in terms of food.¹⁶

In 2014, Brazil had the 7th largest economy in the world.¹⁷ Although the Chinese

economic slowdown has been affecting Brazil—the Chinese market is currently not importing as many raw materials as in the past—the recession (the worst in a century), that the country is currently experiencing, is less caused by that factor than by the *Workers' Party* bribery moves (nicknamed *Mensalão*, *Petrolão*, etc.), which were recently exposed to the light of day. Moreover, Brazil is highly dependent on foreign capital, and foreign trade. As for the economic freedom, Brazil is “mostly unfree,” located behind Nigeria or Mali in the rankings.¹⁸

Regarding the psychosocial projection on the territory [geopolitical factor #5], Brazil is the 5th most populated country in the world, with roughly 204 million people, a predominantly young population.¹⁹ Despite that high number, the population density is very low (particularly in the North and in the central regions), something that creates problems with territorial integration. That is so because some cities are highly inhabited (Metropolitan areas: São Paulo with 21 million, Rio de Janeiro with 12 million, Belo Horizonte with 5 million)—almost 86 percent of Brazilian people were living in a city in 2015. In this way, on the national level, the cohesion of the population is low (e.g., existence of social disparities).

As for other characteristics of the Brazilian people, they are mostly Catholic and their peaceful character, in general, appears to be very tolerant and flexible. In this context, Brazilians are prone to accommodate controversial ideas or behaviors in respect to their own previous ideas and behaviors.²⁰ Despite this flexibility and relaxed character, the blood-spattered communist *guerrilha* from the 30s/60s until the 70s, should be remembered.

The last geopolitical factor analyses the politico-military structures [geopolitical factor #6]. The political and judicial systems in Brazil, in general, are highly corrupt.²¹ Although the Constitution has been formally respected and the institutions kept working in what seems to be the regular way, the *Workers' Party* has been infiltrating its agents, militants, supporters in the state's structure in politics, bureaucracy, judiciary system, education, public companies, cultivating sympathies even within the Armed Forces.²² The impeachment process that President Rousseff suffered did not change the situation as of yet.

Ranked #24 in the soft power index,²³ together with the above-mentioned notions of “flexible character” and “friendly people,” Brazil is associated with images of “party,” “samba,” “carnival,” “soccer,” “sex-paradise,” “beaches and the sun.” These cultural foreign policy images contrast with a brutal number of intentional homicides (more than 56,000 assault deaths in 2012, four times more than in the U.S.A.²⁴), high levels of drug trafficking and drug consumption, extortion, kidnapping, corruption, failed prison system, diseases (e.g., Zika, Dengue). With the exception of the latter, all the rest seems having been stimulated or protected by the government itself, namely through protection or benevolent attitude towards crime.²⁵ That correlation of government and crime can also be identified due to the connections of *Workers' Party* with criminal organizations.²⁶ The main idea to keep in mind here is that crime and social instability favors a revolutionary environment, which is indispensable to the success of the *Worker's Party* policies in particular and the Brazilian radical left in general. In this way, the label “*narcoestado*” can be used, not

in the sense that the state controls the trade, but in the sense that the state is allied with forces that control the drug trade. The related corruption/drug trafficking/social chaos/*Workers' Party*, associated with São Paulo Forum, will be analyzed in detail in another work.²⁷

Regarding the leftist aspect of Brazilian political regime, it should be stressed that two of the biggest parties in the political system: *Workers' Party* (PT) and *Brazilian Social Democratic Party* (PSDB) were both created within CEBRAP [Brazilian Center of Analysis and Planning], which was constituted in 1969 by leftist university scholars, and funded by the Ford Foundation.²⁸ It is also noteworthy that both parties do not differ in the objectives, but in the modalities of action only. Examining a primary source, the former Brazilian President Fernando Henrique Cardoso affirmed twice in a 2004 interview that “the dispute between his party (PSDB) and the *Workers' Party* is political and not ideological.”²⁹ There are studies devoted to the topic, for example, a study about Fernando Henriques Cardoso characterizing him as a political agent in the marxist-gramscian line.³⁰

The political situation of leftist hegemony in Brazilian politics and culture that is described still endures. Recently, some of the most well-known names of Brazilian University, who have links to the political power, met at the *Universidade de São Paulo's* Faculty of Law with the purpose of reaffirming the importance of continuing in the “historical path” towards “social justice” and “the dangers of a *bourgeois* victory that would destroy democracy.”³¹

Referring to the military sub-factor, Brazilian Armed Forces, which are the guarantor of the democratic order in accordance with the Constitution, have not interfered in the state of affairs, so far. With 330,000 active military personnel in 2015, Brazil was assessed, in 2016, as the 15th strongest military power in the world (above Israel and below Indonesia).³² Still, the expenditure on defense has remained relatively low.³³

As for allies, since 1995 till 2015, Brazil has been buying weaponry mostly from [in the order of importance]: France, Germany, the U.K. and the U.S.A.; and it has been selling to mostly: Colombia, Ecuador, Indonesia, and France.³⁴

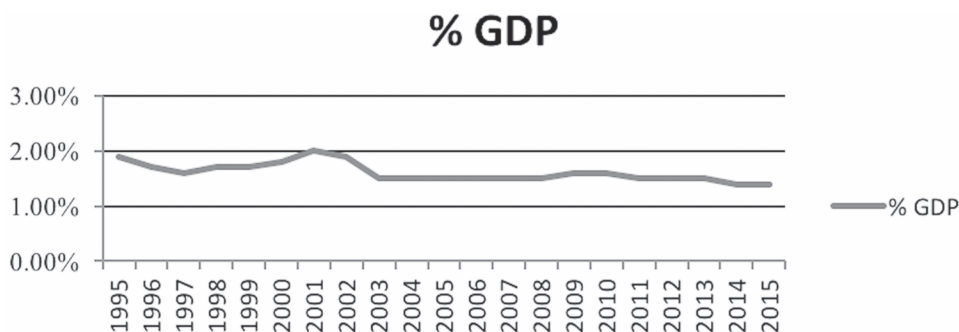
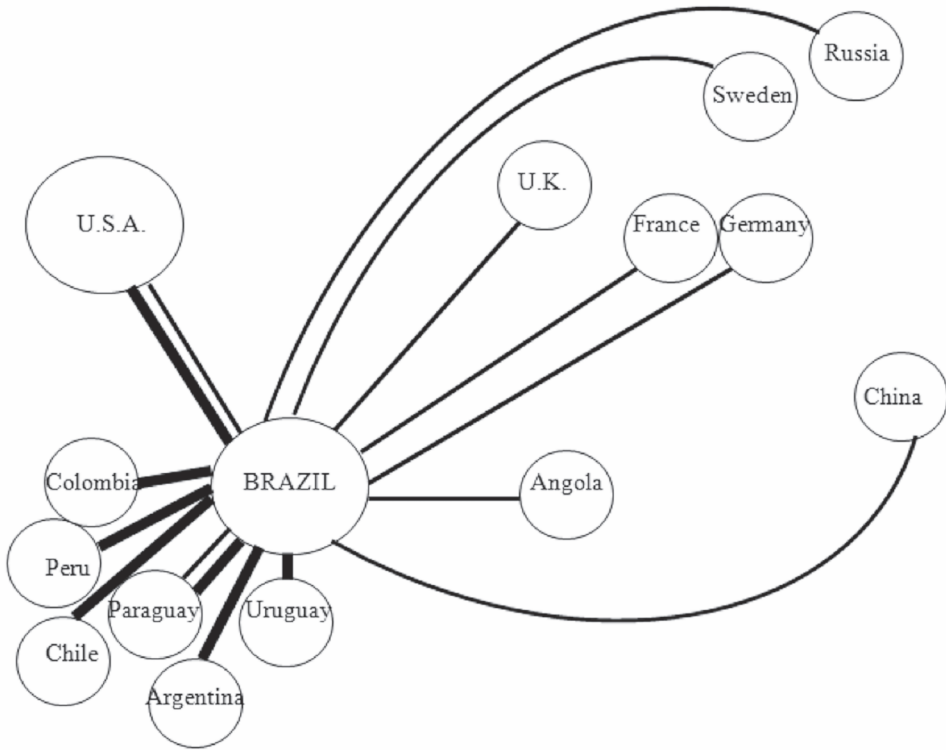


Figure 1. Military expenditure in Brazil as percentage of gross domestic product, 1995–2015 (Source: SIPRI).

The military allies' network could be expressed in the following diagram:



—— Military/Defense Cooperation Agreements
 —— Rio Pact—Treaty of Reciprocal Assistance (Plus: Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Panama, Trinidad and Tobago)

Figure 2. Main treaties in the defense domain signed by Brazil (in action May 2016) (Source: elaborated by the author).

Concluding this brief analysis of relative material state potential variable, a reference to the hierarchy of the Composite Index of National Capability is made. Brazil was ranked at the #6 position, thus above Germany and under Russia.³⁵

The variable of distribution of power (or systemic constraints) is strongly connected to the variable just analyzed above.

With respect to the position of Brazil in concrete terms of Space-Power-Constellation, the country balances between (1) the fact that the U.S.A. remains as (in formal terms) Brazil's primary and strongest military ally, and (2) the ambitions and goals for the South American regional integration. The latter, among its many complex aspects, includes Brazilian active membership in the UNASUL (*União das Nações Sul-Americanas* [Union of South American Nations]), an organization that already encompasses the Council of South American Defense (CDS), which Presidency is exercised by the Pro Tempore President of UNASUL, who at the moment (April 2017) is Venezuela's President Nicolás Maduro—one of the main antagonists

of the U.S.A. in the international arena. Moreover, in 2010, the Community of Latin American and Caribbean States (CELAC) with HQ in Caracas was created.

Through this analysis, the transitory aspect (therefore, contradictory) of the current situation can be observed. In 2007, Brazilian President Lula da Silva had already stated that the strategic priority was: “estabelecer uma estratégia de procedimento entre a esquerda da América Latina.”³⁶

It is noteworthy to remind that Lula da Silva made that statement not during a *Workers' Party* congress, not during a São Paulo Forum session, but into a MERCOSUL meeting. Hence the matter concerns directly systemic constraints. That empirical evidence confirms Brazilian diplomat Paulo de Almeida's hypothesis that MERCOSUL has deviated from its original objective of a free-trade area in the South Cone to be transformed into a Bolivarian instrument.³⁷ That means that MERCOSUL has become, at least to a certain extent, a São Paulo Forum instrument.³⁸

Consequently, sustained by such convincing evidence, it is possible to state, with a narrow margin for error, that the situation of Brazil's international alignment is changing. That change seems to be distancing it from the U.S.A. in detriment of both (1) the South American regional integration, which (2) has links to an approach to the Russian-Chinese axis.³⁹

Analyzing Brazil Through the Intervening Neoclassical Realist Variables

On the path of continuing to apply the mentioned theoretic-methodological framework of neoclassical geopolitics, thus respecting the compartmentalization of variables accomplished in the mentioned works of the author, the paper will now analyze Brazilian *élites'* perceptions and capacities. Nevertheless, it must be stated that it is hard to analyze these issues separately from a single case study about São Paulo Forum to be accomplished elsewhere.

One single argument will be put to the test in this section: that the conduct of politics by Brazilian *élites* is moved by other objectives than the promotion of Brazil's national interests.

This argument—that there is no compliance of the Brazilian *élites* to the country's national interests, and if there has been any, then, it was accidental or tactical—affects and is affected by Brazilian *élites'* perceptions and capacities. So, it is contended that Brazilian *élites*, particularly since 2003 until 2016 (the *Workers' Party* administration), have not been showing any sense of acquiescence to the national interests in the conduct of politics.

In this way, it is argued that, several times, Lula da Silva's political outcomes were clearly made directly against Brazil's national interests. Several examples will be listed.

In 2005, President Lula da Silva produced a decree for the creation of the territorial reserve of *Raposa Serra do Sol*.⁴⁰ The demarcation of 1,747,464 hectares of land inside Brazil (bordering with Venezuela) generates trends for territorial claims,

secessionism and, consequently, jeopardizes the territorial integrity of the country. Besides, it damaged the production of rice too, since the Brazilian rice farmers were displaced, and the roughly 20,000 autochthons, who now live there, do not produce rice in economically viable amounts. Finally, the infrastructures have been collapsing (mainly roads and bridges), and there are security problems as well. None of these problems existed before the displacement of the rice farmers.⁴¹

In the same line of interpreting this fact as anti-national political outcome, in 2008, former Amazonian Military Commander, General Augusto Heleno, classified the governmental policies in this domain as “regrettable, if not to say chaotic.”⁴²

However, *Raposa Serra do Sol* is not an isolated case. Until 2015, territorial reserves in Brazil have been as high as 13.17 percent of the territory of the whole country.⁴³ Therefore, concerning the territorial integrity, an anti-national trend can be identified. Yet, there is more to be added in other domains.

Applying Clark’s methodological guideline for analysis of statements of government leaders and their context,⁴⁴ in 2006, Lula da Silva not only did nothing against Bolivia—which unilaterally broke up an international agreement invading Brazil’s public company *Petrobras*’ facilities with military forces, and nationalizing them through a decree—but Lula da Silva himself confessed that he has previously endorsed Bolivian President Morales personally to do so.⁴⁵ The loss for the Brazilian company was around 872 million R\$ [roughly 482 million USD].⁴⁶ Yet, in 2013, *Petrobras* announced new investments in Bolivia again.⁴⁷

The creation of the University for Latin American Integration (UNILA), by Lula da Silva in 2010, can be also included in the modalities of action with the purpose of dissolving national sovereignties, including Brazil’s.⁴⁸

The dynamics of disregarding the national interests can be, therefore, inferred. In these circumstances, it can be contended that this argument is able to explain logically why Brazil has been accumulating states’ failures. Thus, the reason why Brazil has not been pursuing a “sovereign” foreign policy.

Tracing the causes, it is believed that this anti-national phenomenon in Brazil has its origins in the prevailing constraint of the international-leftist solidarity. If, on the one hand, Brazilian *élites* have been enjoying a leftist hegemony for decades, and more antiquity goes together with more power, on the other hand, within the same leftist hegemony, Brazilian influential individuals in society and culture have been, in the overwhelming majority, controlling the flow of information that the people have access to, at the same time that the political *élites* have been determining the (anti-national) objectives in the course of political action—more knowledge goes together with more power. The system is then extremely solid.⁴⁹

Lula da Silva admitted that his *Workers’ Party* aims to transform South America into a bloc, i.e., to virtually erase Brazil’s national sovereignty.⁵⁰ Rousseff continued in the same direction. Rousseff was impeached, removed from office, but current Brazilian President Michel Temer (who is not even a *Workers’ Party* member) referring to the UNASUL, already sustained that the South American regional integration maneuver must continue and that the institutions (i.e., executive bodies, a South American parliament, a South American court), in which those integration

procedures are based on, have to be multiplied and their power increased. A final mission of the Brazilian state, Temer proclaimed, is to help to create a “Latin American nation” [sic].⁵¹

It can, therefore, be identified an anti-national geopolitical continuity in Brazil, in the sense that Brazil’s sovereign national interests are disregarded. Furthermore, until the present, that geopolitical continuity did not change with the end of the administration of the *Workers’ Party*. That fact suggests the explanation that the geopolitical continuity is now promoted more by the Brazilian political system in general, than by a party in particular.

In this way, revisiting Taliaferro’s methodological steps,⁵² an anti-statist ideology can be pointed out, since the interests of Brazil have not been pursued externally. On the other hand, the existence of a statist ideology remains, but only in the sense of increasing the power of the state in the internal affairs, certainly with the purpose of enlarging the state’s capacities for control making, consequently, an international engagement is easier (i.e., reinforcing the mentioned geopolitical continuity).

In conclusion, the Brazilian *élites*, who were object of study in this section, can be considered *geomisguided* in terms of assessment of the *Raumsinn*, taking into account that the geographical setting’s incentive for a *sea power* grand strategy has been ignored.⁵³ Instead, the choice has been a *land power* geoconjunctive maneuver (the South American regional integration), accomplished under leftist ideological guidelines.

The empirical analysis of Brazil’s geopolitical design will strengthen those arguments.

Analyzing Brazil’s Geopolitical Design

The text comes finally to the task of assessing Brazil’s geopolitical design, i.e., to unveil and to elaborate the list of the countries’ interests/goals and its hierarchy.

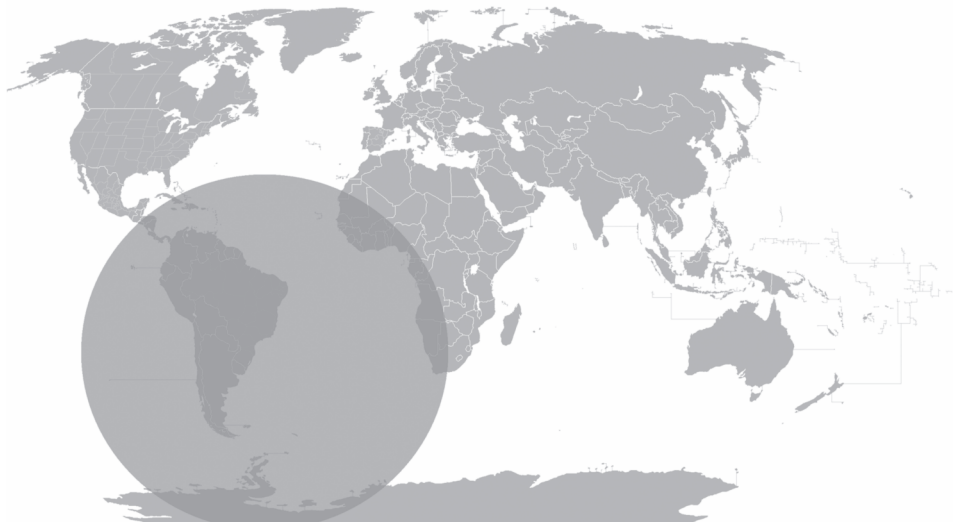
The National Defense Policy [*Política Nacional de Defesa*] and the National Defense Strategy [*Estratégia Nacional de Defesa*] comprise crucial information for the research about the geopolitical design.

In those documents, Brazilian authorities expressed concern about a possible increase of tensions for: “the control of maritime areas, supremacy in the outer space, sources of fresh water, food and energy.”⁵⁴ It is needless to remind that all those problems are covered by geopolitical studies.

The documents established Brazil’s priorities in the following hierarchy⁵⁵:

1. Cooperation with South American countries;
2. Brazil’s area of influence includes: South America, Western African Countries, Antarctica and Caribbean;
3. South American integration: MERCOSUL, UNASUL, *Organização do Tratado de Cooperação Amazônica*, cooperation with CELAC, *Zona de Paz e Cooperação do Atlântico Sul*;

4. Cooperation in the CPLP [Community of Portuguese Language Countries];
5. BRICS.



Map 2. Mapping Brazil’s area of influence in the World as perceived by Brazilian *élites* (Source: elaborated by the author, from https://commons.wikimedia.org/wiki/File:Mapa_mundi_divisiones_blanco.PNG).

Furthermore, the mentioned documents contended about (1) possible threats to Amazonia,⁵⁶ and (2) underlined the relevance of stimulating the South American Integration—“building up a South American unity [*sic*]” with the Council of South American Defense.⁵⁷ On the latter topic, it corresponds directly to Meira Mattos’ prescription calling for the continentalization “strategy.”⁵⁸

In the White Book of Defense [*Livro Branco de Defesa*], the South American integration was again proclaimed as a “strategic objective” of Brazilian foreign policy [*objetivo estratégico da política externa brasileira*] and the importance of UNASUL and the Council of South American Defense—in the sphere of defense cooperation⁶⁰—was reassured.

Taking into account the effort for the definition and accurate use of concepts, the use of the expression “strategic objective” to characterize a *geoconjunctive* maneuver is considered a failure.⁶¹ Besides, how can the objective be strategic if the documents themselves affirm that, technically, there is no opponent to be identified?

It cannot be ignored too that, within the mentioned priorities established by the Brazilian highest defense and foreign policy decision-makers, the U.S.A.—which has been Brazil’s traditional ally and it is still a member of Rio Pact⁶²—was not named once. In this context, it seems very hard to understand the U.S. Department of State’s almost enthusiastic text, listing the main points of cooperation with Brazil.⁶³ That cooperation has been massively reduced in the last years. That constitutes



Map 3. Map of Pan-Amazonia in the White Book of Defense.⁵⁹

further evidence that helps to infer that the international positioning of Brazil is distancing itself from the U.S.A.

If, on the one hand, the official documents under scrutiny stated that Brazil has no enemies on the international arena, on the other hand, it seems that Brazil's foreign policy direction has been oriented, if not against the U.S.A. directly, it has been treating the relationship with the "former" ally with irreverence, to say the least. This paper insists on the point that none of these geopolitical dynamics are independent of (1) the progressive leftist socio-political hegemony in the subcontinent, (2) the South American integration maneuver, and (3) the São Paulo Forum.

In this context of geopolitical continuities, some facts can be explained in a more coherent manner. For example, although Rousseff was impeached, the new President of Brazil, Michel Temer, appointed Raul Jungmann as Minister of Defense. Jungmann is a *Popular Socialist Party* member,⁶⁴ which participates in São Paulo Forum.⁶⁵ There is continuity indeed, since the *Communist Party of Brazil*, from which Aldo Rebelo (Jungman's predecessor) is a member of, also participates in São Paulo Forum. Jaques Wagner, Rebelo's predecessor, is a member of the *Worker's Party*, which was one of the founding parties of São Paulo Forum back in 1990.

Putting a solid geopolitical continuity at the top, the empirical facts fit in the puzzle of a logical explanation and support the crucial argument that, under a leftist ideological guideline, the South American integration maneuver has constituted the priority in Brazilian foreign policy, to the detriment of Brazil's national defense.

Conclusion

The particular way in which the foreign policy executive perceives the world—and concretely the space (i.e., territory) it is in charge of—shapes states' foreign policy outcomes. One of the main points of this paper was to put light on the *experience/perception* that Brazilian *élites* (i.e., the *foreign policy executive*), have concerning the geographical setting's incentives of their country—the latter included in the relative material state potential, added to the systemic constraints.

The paper assessed that that experience or perception [*Raumsinn*] has been *geomisguided*, something that can be explained by the empirical existence of an international-leftist agenda in South America, namely identifiable within the political structure of São Paulo Forum. The results of the research, namely the data retrieved directly from governmental sources, show that the strengthening of the South American integration maneuver has been the priority to the Brazilian foreign policy executive, in other words, it has constituted the priority in terms of geopolitical design.

In this context, it was explained that, although the study demonstrated that the relative material state potential of Brazil has been fairly high and that the systemic constraints have been permissive to changes on the international chessboard, Brazilian *élites* have been pursuing a geoconjunctive maneuver that can be assessed as one against Brazil's national interests. The argument of damaging the national interests can be sustained by a set of facts that can be resumed in two dimensions. First, Brazil has been accumulating state's failures for years (security, political, economic). Second, previous research demonstrated that the preference for *land power* (continentalization) over *sea power* (maritimization) intensifies the causes of state's failures.

In terms of international alignment, the situation of Brazil is transitory, therefore contradictory. It includes (1) the particular fact that the strongest of Brazil's formal allies is still the U.S.A. (Rio Pact, 1948). However, (2) Brazil integrates the UNASUL and the Council of South American Defense, which consolidates the South American regional defense (excluding North America) and, furthermore, intends to approach the Russian-Chinese axis.

Notes

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3. Carlos de Meira Mattos, "Geopolítica e Modernidade," in *Geopolítica Vol. III*, ed. Biblioteca do Exército (Rio de Janeiro: FGV Editora, 2011).
4. Nuno Morgado, "Continentalization versus Maritimization—The Debate Within Brazilian School of Geopolitics and Its Political Consequences," in: *3rd International Multidisciplinary Scientific Conference on Social Sciences & Arts*, SGEM Vienna Hofburg, Book 2 Political Sciences, Law, Finance, Economics & Tourism, Volume I Political Science (Sofia: SGEM International Multidisciplinary Scientific Conference on Social Sciences & Arts, 2016).
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11. The U.S. Energy Information Administration, “International,” <http://www.eia.gov/beta/international/?fips=SU&trk=p2>, last modified May 2016.

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14. Agência Senado, “Projeto proíbe construção de usinas nucleares pelos próximos 30 anos—Brasil tem duas usinas em atividade e outra em construção, todas no Rio de Janeiro,” *UOL*, <http://jconline.ne10.uol.com.br/canal/politica/nacional/noticia/2017/07/31/projeto-proibe-construcao-de-usinas-nucleares-pelos-proximos-30-anos-298436.php>, last modified October 2017.

15. CIA, “Brazil,” *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html>, last modified June 2016.

16. Encyclopedia of the Nations, “Brazil—Agriculture,” *Encyclopedia of the Nations*, <http://www.nationsencyclopedia.com/economies/Americas/Brazil-AGRICULTURE.html>, last modified October 2017.

17. World Bank, “Gross Domestic Product 2014,” *World Development Indicators database*, <http://databank.worldbank.org/data/download/GDP.pdf>, last modified May 2016.

18. The Heritage Foundation, “2016 Index of Economic Freedom,” *Index of Economic Freedom—Country Ranking*, <http://www.heritage.org/index/ranking>, last modified June 2016.

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20. That would be the reason why Brazilians have been voting/supporting socialist and communist parties for decades, although they are mostly Christians. However, currently, the situation seems to be changing with the popular revolts against the regime in 2015.

21. Transparency International, “Corruption Perceptions Index 2015,” <http://www.transparency.org/cpi2015#results-table>, last modified May 2016.

22. For specific cases of placing “Workers” Party members, supporters, militants in public structures *vide*: Morgado, 2016.

23. The Soft Power 30, “Index Results,” <http://softpower30.portland-communications.com/ranking/>, last modified June 2016.

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25. The case of former Secretary for Human Rights Maria do Rosário provides strong empirical support for this claim. For example, Rosário’s public defense of criminals—Syl Polanski, “Jovem fica tetraplégico após assalto e Maria do Rosário vai na TV defender o criminoso,” *Blastingnews*, <http://br.blastingnews.com/sociedade-opiniao/2016/06/jovem-fica-tetraplegico-apos-assalto-e-maria-do-rosario-vai-na-tv-defender-o-criminoso-00985933.html>, last modified June 2016.

26. This object will be taken care of in another paper. However, some data on the topic is given in the next footnote.

27. In regard to corruption, the same progressive left that constitutes the ideological spectrum of both São Paulo Forum and the Meridionalist strategy has been denounced in consecutive corruption scandals, in which thousands of millions of R\$ were either stolen by leftist state's officials, or spent in other São Paulo Forum fellow member, or other given to communist countries such as Angola. The events are integrated onto a thick net—Mídia livre FCS, “Lava-Jato revela que dinheiro desviado da Petrobras também foi para Cuba, Argentina e outros,” Mídia livre FCS, <http://folhacentrosul.com.br/post-politica/7443/lava-jato-revela-que-dinheiro-desviado-da-petrobras-tambem-foi-para-cuba-argentina-e-outros>, last modified July 2016.

It should be kept in mind that the progressive leftist representatives have been accusing “neoliberalism” of having caused economic problems in the 90s. However, it should be also added that there was no capitalism in Latin America during that period, because “privatization” was not accompanied by “liberalization,” since those agents who bought states’ property remained attached to the state—in the same line of 90s’ Russia. Therefore, the true crisis is now arriving, clearly linked to corruption scandals fomented by the leftist executive officials during the last decades.

As for the relations between the *Workers’ Party* administration and drug-trafficking, it is important to remind:

- (i) São Paulo Forum, which was created by Lula’s *Workers’ Party* and Castro’s *Cuban Communist Party*, received Colombian *guerrilha* representatives in its meetings (*vide*: the minutes of *Foro de São Paulo—Compilação das Atas do Foro de São Paulo*, “Atas do Foro de São Paulo,” *Mídia Sem Máscara*, http://www.midiasem mascara.org/attachments/007_atas_foro_sao_paulo.pdf, last modified October 2016; and Raúl Reyes, a Member of FARC Central High Command killed in 2008, was one of the agents making the bridge between FARC and São Paulo Forum, as the São Paulo Forum’s newspaper *America Libre* informed—Claudia Korol, “El pueblo en armas, entrevista a Raúl Reyes, miembro del secretariado nacional de las FARC-EP,” <http://www.nodo50.org/americalibre/anteriores/10/>, last modified August 2015. In order to understand FARC’s quest for political legitimization and the role of *Workers’ Party* in that process *vide*: Colonel Luis Alberto Villamarín Pulido, “A camarada e compatriota Dilma Rousseff é a tábua de salvação política das FARC,” *Conflicto Colombiano e Historia de Colombia*, <http://www.luisvillamarin.com/articulos/portugues/411-a-camarada-e-compatriota-dilma-rousseff-e-a-tabua-de-salvacao-politica-das-farc.html>, last modified July 2015; and General Marco Antonio Felício da Silva, “O PT, as FARC e o crime organizado,” *Inconfidência*, http://www.grupoinconfidencia.org.br/sistema/index.php?option=com_content&view=article&id=2222:o-pt-as-farc-e-o-crime-organizado&catid=284:marco-antonio-felicio-da-silva&Itemid=426, last modified November 26, 2015.
- (ii) Not only FARC participated in São Paulo Forum meetings, but also the resolutions of the 10th São Paulo Forum congress in Havana constitute evidence of the support given by São Paulo Forum to FARC—*Compilação das Atas do Foro de São Paulo*, “Atas do Foro de São Paulo,” *Mídia Sem Máscara*, https://s3.amazonaws.com/midiasem mascara/site/uploads/resolucoes_do_foro_sao_paulo.pdf, last modified December 2008.

In addition, there is another very important document on this matter, a letter sent by FARC to São Paulo Forum in 2007. In this document, among valuable data, it is noteworthy that: (1) FARC thanked the *Workers’ Party* for having saved the revolutionary socialist movement in South America, and (2) FARC claimed that the coming to power of leftist officials in South American countries was an outcome of São Paulo Forum influence—Fuerzas Armada Revolucionarias de Colombia-Ejército del Pueblo, “Saludo Mesa directiva del Foro de Sao Paulo,” *FARC-EP*, <http://web.archive.org/web/20070310215800/www.farcep.org/?node=2,2513,1>, last modified January 2007.

- (iii) Already in 2013, the FARC controlled the majority of the illegal drug trade in Colombia—Helen Murphy and Luís Jaime Acosta, “FARC controls 60 percent of drug trade—Colombia’s police chief,” *Reuters*, <http://uk.reuters.com/article/uk-colombia-rebels-police-idUKBRE93L18Y20130422>, last modified April 2013.

28. CEBRAP, “Institucional,” <http://cebrap.org.br/v3/index.php?r=institucionais/index>, last modified June 2016.

Gustavo Henrique Lopes Machado, "PT versus PSDB: em que consiste o antagonismo?," *Diário da Liberdade*, <http://www.diarioliberalidade.org/opiniom/opiniom-propia/31507-pt-versus-psdb-em-que-consiste-o-antagonismo.html>, last modified September 2012.

UOL, "O laboratório de FHC," <http://www1.folha.uol.com.br/fsp/mais/fs15089914.htm>, last modified August 2016.

29. Fernando Henrique Cardoso, "A luta de PT e PSDB é política, não ideológica," Partido da Social Democracia Brasileira, <http://www.psdb.org.br/acompanhe/noticias/a-luta-de-pt-e-psdb-e-politica-nao-ideologica/>, last modified November 2004.

30. For example: Álvaro Bianchi, "Dossiê 'Gramsci e a Política' Apresentação," *Revista de Sociologia Política* no. 29 (November 2007), p. 8.

31. Artur Scavone, "Marilena Chauí no ato contra o golpe," *YouTube*, <https://www.youtube.com/watch?v=GbTB51BS89A&spfreload=5>, last modified December 2015.

32. Global Firepower, "Countries Ranked by Military Strength (2016)," Global Firepower, <http://www.globalfirepower.com/countries-listing.asp>, last modified June 2016.

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34. SIPRI, "Arms Trade," http://armstrade.sipri.org/armstrade/html/export_values.php, last modified April 2016.

35. Index of National Power, "Index Comparisons," <http://www.nationalpower.info/index-of-national-power/comparing-nations-using-different-power-indecies/>, last modified June 2016.

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37. Paulo Roberto de Almeida, "Do lulopetismo diplomático a uma política externa profissional," *Academia.edu*, https://www.academia.edu/25639710/Do_lulopetismo_diplomatico_a_uma_politica_externa_profissional, p. 5.

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42. "Lamentável, para não dizer caótica"—Leandro Prazeres, "General que criticou política indígena deixa comando da Amazônia e evita falar sobre Raposa/Serra do Sol," UOL, <https://noticias.uol.com.br/politica/2009/03/23/ult5773u873.jhtm>, last modified March 2009.

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44. Robert M. Clark, *Intelligence Analysis—A Target-Centric Approach* (Los Angeles: SAGE, 2013), p. 94.
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56. *Ibid.*, pp. 31, 54.
57. *Ibid.*, pp. 58–59.
58. E.g., Carlos de Meira Mattos, *Uma Geopolítica Pan-Amazônica* (Rio de Janeiro: Biblioteca do Exército Editora, 1980), p. 161.
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60. *Ibid.*, pp. 37–38.
61. “Geoconjunctive process” was a classification created by the author in order to designate cooperative modalities of action among political actors in the domain of “applied geopolitics.”
62. The Rio Pact or the Inter-American Treaty of Reciprocal Assistance is a military alliance, still in force, between the majority of the countries in the Americas signed in 1947.
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Biographical Statement

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When Westphalia Goes to (Greater) China: Territory, Sovereignty and Legal Narratives Across the Strait

Horia Ciurtin

Structured Abstract

Article Type: Research Paper

Purpose—The present study aims to reconceptualize the underlying tenets of Westphalian links between sovereignty and territoriality, showing how an “exported” Eurocentric doctrine actually functions in a distinct legal environment—post-imperial China—and the manner in which a protracted political-ontological dispute can or cannot make use of established Western-based legal mechanisms.

Approach—By focusing on the cross-strait dilemma of overlapping claims to sovereignty upon a “greater” China—advanced both by the People’s Republic of China and the Republic of China (Taiwan)—we aim to show how volatile (and fragile) the functionality of Westphalia actually is. In this regard, we first concentrate upon the “genealogy” of Westphalia itself, as well as on the competing narrative of Sinocentric regional order, setting the scene for an unavoidable clash of paradigms. Afterwards, it is shown how the allegedly victorious vision of Westphalia was rewritten (and conceptually undermined) when applied to the cross-strait divergence.

Findings—By following a genealogical path of Westphalia and of the intra-Sinic dispute, the present enquiry shows that a Eurocentric concept (such as sovereignty) is ill-suited to address challenges that occur in such different legal-political frameworks. Moreover, it can be discerned that even though Westphalia could have been of some (albeit limited) use when European and non-European actors collided, it

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is unable to deliver a path forward for polities that were both part of a common non-Westphalian system.

Originality—When taken apart, neither the analysis of Westphalia, nor of the Sinocentric paradigm structurally reconfigure the shape of the present debates. However, it is a leap forward to join them together into a larger narrative about cross-cultural collisions, showing how even a *neutralized* Westphalia is dysfunctional in polities with a distinct (and strong) political tradition.

Keywords: China, sinocentrism, sovereignty, Taiwan, Westphalia

Diffusing Westphalia: Narratives of Sovereignty

As all stories of international law, the story of Taiwan-China sovereignty goes back—at least conceptually—to 1648. All the roads seem to lead to Westphalia.¹ But do they really go down that path? Should they actually trace narratives of state legitimation to that particular point in time and space? At first glance, modern scholars of international relations (and law) have successfully struggled to void Westphalia of any essentialist singularities, transforming it into a universal—and supposedly *acultural*—standard for defining self-standing polities in the global agora.

The Symbolic Significance of 1648: Ideology and Exegesis

However, a closer look might reveal a different image. The (modern) story of Westphalia and the *actual* Westphalian peace are not at all the same thing. And even the story itself is not a single one, but a collection of tales that have crystallized over time into an indiscernible network of ideological positions, historical interpretations and legal approaches. Westphalia has become a “metaphor”² of many readings. Its historical content has been neutralized (that is, made *neutral*), often leaving it as an empty shell open for any (re)interpretation.

And—thus—present scholarship is confronted with a diverse “menu” of ideological options when bringing Westphalia to the forefront of analysis: “realist” and “liberal” watershed-of-history readings, (post)Marxist class-conflict readings, (neo)Schmittian *jus publicum Europaeum* readings, critical legal deconstruct-Westphalia-while-you-can readings. Many other sub-strains of exegesis emerge, arguing on one point or another, but—nonetheless—still placing 1648 at the center of their narrative. With deference or disgust, with a stake in building conceptual genealogies or from a necessity to wipe it out from history, all major modern political theories acknowledge—even if only in the form of a repressed side-discourse—the impossibility to neglect Westphalia in any legitimation construct.

However, irrespective of the ideological option, a prime question must be answered: is sovereignty causally dependent upon Westphalia? Is it circumscribed to the 1648 momentum as a “story of origins”? If the answer is positive, it might lead to an uncomfortable truth: sovereignty is linked to a historical event—a particular point in space and time—being defined by such specific circumstances. The corner-

stone of international relations (and law) would—thus—tend to be a *cultural construct* emanating from unique historical conditions.

In order to answer such a dilemma, the first step is to part ways with “technical” or “assumed” understandings of the notion and to re-trace the conceptual genealogy of how Westphalia is perceived today. When confronting the *significance* of the 1648 momentum, two different lines of interpretation emerge. First of all, a more “classical” strand of interpretation argues that Westphalia was a decisive event marking “the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world.”³ As 1648 is seen as a “watershed” of history, a disruptive hiatus within history’s winding path, such a perception tends to singularize this exact moment as the birth-place (and birth-time) of sovereignty, which transformed “the territorial state [into] the cornerstone of the modern state system.”⁴

On the other side of the exegetic barricade, it is emphasized that Westphalia—as a historical moment—is not “a turning point” and “not a clear break with the past.”⁵ It rather appears—in this vision—as a retrospective construction of the past, “a product of the nineteenth- and twentieth-century fixation on the concept of sovereignty,” a mechanism devised by later theorists (mainly jurists) in order to legitimize their contemporaneous political positions.⁶

Moving the nascent concept of sovereignty to a later stage in history—perhaps the French Revolution or the industrialization and colonialism of the 19th century—such a perspective still ascribes the notion within a similar narrative, but considers a different degree of significance for 1648 momentum.⁷ Thus, even if the Westphalian treaties “did not create, *de jure*, a system of independent states, perhaps they nevertheless constitute a turning point after which, *de facto*, the imperium’s atrophy allowed the [...] distinct separate polities to effectively exercise exclusive control and power over their territories.”⁸ In other words, this type genealogical exegesis remains a “Westphalian” discourse (of legitimation), but without Westphalia itself.

Although parting ways in giving (or not) 1648 the main position in altering the course of (legal) history, both visions still come to acknowledge a narrative of progression towards the sovereign state. For some, Westphalia is the accomplishment of this path, for some it is only the beginning, for some it is only one step among many others. However, all of them inscribe into a linear perspective of (European) history, culminating in the advent of territorial sovereignty as a fulfillment of a deficient international order.

Therefore, in order to grasp the myriad meanings of “Westphalia,” it is necessary to follow three parallel lines of interpretation: (a) it must first be ascertained what the 1648 Peace actually represented for the drafters of the treaties signed in Osnabrück and Münster, (b) what the systemic consequences (even unintended) of the historical moment were and (c) what Westphalia (retrospectively) came to symbolize for further generations of political and legal scholars. Only by deploying such a broad hermeneutic key can it be discerned which descriptive narrative is truly grounded in the events leading to the 1648 Peace and which is an anachronist reading of the past.

Starting with Westphalia's primary—and historical significance—this was rather a functional one, a mere legal-political *instrument* born out of compromise and meant to defuse a violent crisis that nearly devastated Western and Central Europe in the mid-17th century. It was a solution to end a regional war triggered by theological quarrels, rather than an abstract blueprint for the future “world” order.

At that point in time, Westphalia's purpose was not to establish a new paradigm for a community of equal independent states, but to halt the disintegration of Europe. And such a cessation of hostilities was made “for the glory of God and the security of Christendom.”⁹ It was a stalemate arisen out of wartime exhaustion, not a philosophical “revolution.” The primary motives—as emphatically shown in the preambles—were security considerations, supported by theological underpinnings.

Fashioned as “a Christian, universal, and perpetual peace and a true and sincere friendship”¹⁰ between the Holy Roman Emperor and the Queen of Sweden (in the case of the Treaty of Osnabrück) and the King of France (in the case of the Treaty of Münster) together with their respective allies, the content of the treaties focused on solving the very specific—and pragmatic—issues of the day: territorial reconfigurations, succession rights, confessional relations, establishment of new state actors.

In this sense, none of the treaties were drafted with the intention to profess a utopian vision laying out “neutral” principles of international order, but an acknowledgment of how specific polities can continue to cohabitate without falling again into mutual annihilation. The desire for “universal” peace only extended to certain Christian powers in Europe¹¹ while its “perpetual” character was mere wishful thinking after three decades of continuous generalized strife. More precisely, the treaties of Westphalia sought a restoration rather than a revolution, the return to what was before 1618 (when the great conflict erupted) and not the dawn of a new age.¹²

Nonetheless, the (theoretical and practical) consequences of the embedded peace terms went far beyond the intentions of the treaty drafters. Thus, while rhetorically insisting on the “Christian” nature of the consensus, the Westphalian watershed formalized a new balance of power that no longer corresponded to the medieval notion of *respublica Christiana*. The traditional Empire-Papacy dynamics (already obsolete since the advent of Reformation) were irreversibly displaced by a state-to-state manner of interaction. Not along religious, but political lines.¹³ And with no remaining overarching secular or sacred authority to unify, pacify and coagulate the system as a whole. Anarchical it became indeed. With sovereignty as a “side effect.”

At the same time, despite little emphasis on the notion of *sovereignty* (“ius territorialis” or “Landeshoheit”) in the treaty texts themselves¹⁴—expressing circumstantial and particular rights of imperial estates or certain rulers—such a concept was inextricably linked afterwards with the 1648 momentum. One can, thus, legitimately enquire why sovereignty became an implicit theoretical corollary of Westphalia. Was it completely anachronistic for legal scholars to trace the origin of notion to this specific historical event? And—more important—what was the hermeneutic process that allowed such a connection to be deployed as a causal link?

What was designed at Westphalia, what emerged due to Westphalia and what scholars posit as the meaning of Westphalia are three different conceptual worlds.

However, they do intersect when unwinding the narrative of sovereignty's conceptual genesis. Although the diplomats that drafted the treaties had no conceivable intention to build-up a new system of international governance and an abstract blueprint for universal interaction, they practically dealt with issues pertaining to territorial sovereignty. This was not necessarily an absolute novelty in European history (Jean Bodin and Hugo Grotius had already laid down much of the theoretical apparatus), but it was a formalized manner to reorganize the political arrangement in the Western part of the peninsula, stemming not from marginal polities, but from all major powers of the day.

As Derek Croxton showed, “[a]lthough no one yet conceived of sovereignty as the recognition of the right of other states *to rule their own territory*, the increasingly complex diplomatic milieu shows how a multipolar system was able to develop. In this sense, one may locate the origins of sovereignty around the peace of Westphalia, but only as a *consequence* of the negotiations, not of an explicit or implicit endorsement of the idea of sovereignty in the terms of the treaties.”¹⁵

Not the Peace terms themselves led subsequent theorists to argue for a Westphalian origin of sovereignty, but their implicit consequences. It was a turning point in *European* history, ending—for good—the fundamentals of imperial (hierarchical) authority. A regional affair, linked to specific challenges, but which paved the way for a formally acknowledged way to formally interact on the continent. And beyond it.

In such a context, territorial sovereignty emerged as a victorious vision to govern internally and engage in diplomatic relations externally, in accordance with the “Westphalian model.” As Stephen Krasner explains, this state-centric paradigm came to be understood as “an institutional arrangement for organizing political life that is based on two principles: territoriality and the exclusion of external actors from domestic authority structures.”¹⁶ For all later generations of jurists, political theorists and IR scholars, such a reading of sovereignty became embedded within a Westphalian exegetic framework.

However, decrypting the historical development of the concept with a Westphalian hermeneutic key does not—therefore—mean that sovereignty is linked to the strict 1648 moment, but rather that Westphalia becomes a “metaphor” for an “entire *phenomenon* that was rhetorically and ideologically re-centered around that specific event in order to explain the later evolution of state practice and political theory.”¹⁷ Sovereignty becomes inextricably dependent upon Westphalia-as-a-process¹⁸ (and not as an event), allowing (legal) exegesis to instrumentalize it as the assumption upon which the entire international system relies.

Westphalia appears, in this grand narrative, as a self-contained discourse of *legitimation*. Its purpose is not to tell us what was, but what (and how) it should be. It is not meant to be a constative, but rather a performative language-game.¹⁹ One that loosely anchors itself in history, but which develops its entire theoretical apparatus based on “creative” exegesis. Only in such a manner can a story of sovereignty be told convincingly.

Uprooting Westphalia: A Neutral and Universal Concept of Sovereignty

However, this brings us back to the initial dilemma and its uncomfortable consequences. If all sovereign roads lead to Westphalia—one way or another—such a notion is impossible to separate from particular cultural circumstances. In this manner, the inception of sovereignty is confined to a unique set of philosophical challenges which hardly make it “universal.” A Westphalian-type narrative is undoubtedly Eurocentric and (causally) associated with the conceptual prerequisites of this legal macro-space.

Any such vision of statehood and sovereignty appears as just another chapter of a much larger tale: the *jus publicum Europaeum* stretching back from (early) Greco-Roman law to Justinian and—through a Byzantine interlude—to scholasticism and Vittoria. Such a strong geo-cultural descriptor managed to generate parallel sets of consequences: while internally ordering the European space in autonomous and self-standing sovereign polities, it opened up the “rest of the world” to appropriation and to being passive object of their sovereignty.²⁰ Therefore—without a hint of negative inferences about the matter—sovereignty is a European story. And so is the entire foundation of international law.

But why is it (simply) European? Does the Westphalian genealogical itinerary determine the notion’s later nature? And does such a designation—as a European concept—mean that it is improper for universalization? To answer these questions, we must begin by remembering that Westphalian “[s]overeignty, after all, was a concept elaborated to fit the unique circumstances of sixteenth- and seventeenth-century Europe. In short, it was designed to explain and legitimize the rise of the centralized and absolutist state.”²¹

At its origins, Westphalia was a *technique* of solving a precise crisis and to surmount particular historical challenges that pertained to a generalized intra-Christian conflict with political, legal and theological stakes. Westphalia was a discussion about the existence of Europe, about the soul of Europe. For that reason, “the validity of the Peace was, in fact, intended to include the whole continent, with the exception, of course, of the Ottoman Empire,”²² a Muslim super-power with high interest—and participation—in continental affairs, but with no religious “capacity” to take part to this grand Christian peace.

Thus, from the outset, the Westphalian standing of a polity was thought in terms of inclusion-exclusion, based on strict cultural descriptors. Every Christian entity was potentially included—even if not directly present—while any other non-Christian power—even if strongly embedded on the continent—was excluded, deemed to have no place at the pacification of Christian Europe.

Of course, such origins of the system are not the only factor to be accounted when analyzing sovereignty’s later development, but they are determinative of the conceptual framework deployed by European actors when dealing with “outer” polities in Asia, the New World or Africa. Its basic tenets of exclusive territorial control and the avoidance of foreign interference were devised for European polities at a

certain point in history when the continent nearly devastated itself due to overlapping jurisdictional claims.

For these reasons, the initial structure of the narrative was rather devised as a mechanism for allowing a hegemonic configuration of the world, one of concentric spheres of influence that gravitate around a European core of sovereignty. Such a notion was not developed to serve other parts of the world for establishing their own autonomy and independence. It was not a tale of global (and diffuse) order, but a tale of European (and monocentric) order. Such were the times and—as happened with any other civilization in a dominant position—legal discourse turned out as another form of privileged (geo)political utterance.

As the world plunged into the colonial 19th century and then emerged out of the Great War, the benevolent principle of self-determination was universalized. This paradigmatic mutation corresponded to neutralizing the entire Westphalian setting—*formally* voiding it of any cultural assumptions—and projecting it to the level of the entire world. New states—and old empires—took upon themselves the cloak of sovereignty. An apparent empty normative shell—with no cultural or political content—seemed to be the best instrument in establishing statehood. However, as history seems to prove, no conceptual genealogy can ever be entirely erased. And no (legal) mechanism remains merely passive in the hands of the mastering power.²³ The instrument itself shapes—and constrains—power in pre-determined paths.

This double process of neutralization and universalization led to the *uprooting of Westphalia*. Sovereignty was re-conceptualized as a positivist artifact devised to both expand it (spatially) and to limit it (materially), fostering a vision of law-as-technology. Such a perspective allowed the sovereign principle to be enshrined as the foundation of a quasi-Kantian universal order, one of equal and mutually exclusive territorial polities which interacted in a normative universe, rather than one of force. Devoid of any “political”—or theo-political—content, sovereignty now appeared as blank a cartographic depiction of “borders,” *a map without any landforms*.

Such a metamorphosis of sovereignty—performed through cultural erasure—affected not only the “rest” of the world, but Europe as well. An identity dilemma became inescapable once the entire global arena was flattened and subject to the same rules and privileges. Nothing about it was “exceptional” anymore and no structural difference could be placed between “us” and “them.” As Westphalia was entirely uprooted and spread all over the world, it no longer seemed that there was a “silent” and “covert” quest for hegemony. Not even a disguised one. This was a phenomenon that gained momentum on its own. A legal-political *golem* that possessed its own life, irrespective—and even against—its creators’ desire.

And thus, sovereignty was unbound.

Taming the Dragon(s): Sovereignty in Greater China

At the same time, the spread of the “neutralized” Westphalian narrative over the world produced radical mutations both in the manner in which politics is

conducted globally, but also upon the understanding of sovereignty itself. In this sense, some Far East polities—such as Meiji-era Japan—managed to immediately take upon themselves the new sovereign clothes and wear them in a European-style, gaining the status of great power and a seat at the table.²⁴ At the same time, other traditional hegemonies of the area were more reluctant in adopting such a new vision and parting ways with centuries of political culture. While the European actors instrumentalized sovereignty to “tame” their Asian counterparts, these actors had different plans for Westphalia. In history, a concept works both ways. Or in too many unforeseen ways.

In conceptual parentheses, our *methodological disclaimer* must be reaffirmed for the purposes of this chapter (and of the next one), making it clear that the following analysis does not aim to ascertain the truth-value or the reality of (post)essentialist claims to identity, nationhood or public self-perception of a given polity, but rather to see how Westphalia-as-discourse was deployed as a language-game for managing the challenges of sovereignty. It is not a description of what Taiwan or PRC really “are,” but rather what they appear to be from the narratives of legitimation they use among themselves and within the larger international agora. It is a story about a story. Not a story about “facts.”

Center and Periphery: When Westphalia Goes to China

When Westphalia went global, it also went (conceptually) rogue. After reaffirming it outside the exclusivist European *oikumene*, sovereignty found new ways of expression (and different challenges) which transformed its foundation. The seemingly “neutral” structure and appearance as a purely technical “mechanism” transformed it into a vector for redrawing the complicated map of power and dominance in the Far East. When European actors were ushered away from the area, the new (and not so new) regional hegemonies shielded themselves with such an instrumental understanding of sovereignty in order to legally replace “outside” authority with self-standing polities.

While the Westphalian narrative proved to be a corrosive tool in the hands of European powers,²⁵ it now became the Asian states’ favorite discourse for asserting their absolute—and unchallengeable—domination upon a given (but increasingly fought over)²⁶ territory. It seemed as a classical story of “center” and “periphery,” in which the latter gained momentum and started to use the former hegemon’s political vocabulary in order to establish itself as a new (although lesser) center.

In reality, the tale of Chinese sovereignty is much more complicated. And different layers of complexity are added when asking the—uncomfortable—questions of traditional worldview, translation of communism (or nationalism) and the debate over who is the “legitimate” sovereign of a “greater” territory. In essence, the dilemma can be simplified to asking if the Westphalian narrative actually works as devised or it only represents a legal pretext for a different type of geopolitical quest. Not only a question of Westphalia’s functionality arises, but also one regarding its desirability.

As always, such an analysis must turn out as an exercise of conceptual archeology. Before the advent of Westphalia in the Far East, a complete and coherent narrative of international relations (and rules) was already in place. The traditional Sinic paradigm was anchored—exactly like its European correspondent—in strong cultural and religious assumptions,²⁷ while also harboring a vision of universality. It was based on two main features that defined it as a Sino-centered system of political interaction: (a) hierarchy and (b) symbolic tribute offering (and submission) by non-Chinese entities.

Its model resembled one of concentric arrangements of power and influence, with the Empire in the middle of the entire structure. The emperor himself was the “Son of Heaven,” ruling by divine mandate and presiding—even if only symbolically—over Chinese and non-Chinese communities as an authority with no bounds whatsoever.²⁸ On the other hand, the symbolical and—rarely *enforced*—Pax Sinica relied on the “tribute system” which “regulated and made possible” the participation of neighboring and foreign (even European) actors in this order.²⁹ Such “peripheral” polities—too far away from the Emperor’s grace—could “present tribute, demonstrating that the virtue of the Son of Heaven had reached lands far and wide. By cherishing these peoples, the Chinese emperor in turn would show his paternal, benevolent status befitting that of a superior.”³⁰

How could this alternative—and radically different—model of state interaction and international law survive along Westphalia? Three different phases succeeded, reflecting the development stages of the sovereignty-discourse in Europe and the increase in relative power of such actors throughout the world. In reality, the conceptual markers of (Westphalian) international law expansion were largely determined by political, economic and military contingencies.

In a *first phase*, in the late 17th and 18th century, the Portuguese and British missions arrived on the coasts of China, where they were condescendingly dismissed as mere distant and (largely) irrelevant “peripheries” for which the Emperor had no interest. The “center” remained immutable while the European actors only sought to take part in it (as tribute-bearers) as it was, not to expand their own model to this area.³¹ This can be explained by emphasizing that Westphalia itself was only a “regional” and culturally imbued arrangement at that time, with no universal desires. Both China and Europe saw themselves as “centers,” but with no stakes in convincing—or converting—each other to the verity of such a position.

On the other hand, the situation was altered in the *second phase*, in mid-19th century. Two phenomena changed the approach: European hegemony and the underlying assumption that its political-legal setting is superior. On being the true—and only “center”—Europe was no longer open for any compromise. Therefore, after the Opium War, China was forced in the position of being a “periphery” in the world order,³² when the Western powers “imposed by force and coercion the Westphalian institutions on East Asia, dismantling in the process the traditional East Asian international order.”³³ After the Treaty of Nanjing (1842), the Sinocentric world order no longer appeared as a competitor for Westphalia, as China passively acknowledged an—eroded and incomplete—sovereignty in the modern sense.³⁴

In a later, *third phase*, once Westphalia was completely “neutralized” itself, a legal technique meant to ensure the universality of (truly) equal sovereign statehood, Asian actors themselves adopted it as a privileged discourse of independence and “decolonization.” Sovereignty—as a language-game—became the only desirable model for statehood and interaction on the global arena. This type of Westphalian narrative created a world with no “periphery,” but a world of many “centers.”

And the dragon had been (legally) tamed. At least at a formal level.

Nothing but Territory: The Clash of Sovereignties

The adoption of such a system in a radically different environment created new challenges and unsolvable dysfunctions. At first glance, Westphalia might have seemed neutral and universal—empty of any cultural pre-requisites—and China might have seemed uprooted from its Sinocentric perspective. The reality, however, revealed a more enduring competition of worldviews and a repressed sense of centrality which was only temporarily blurred by an *instrumental* Westphalian legal discourse.

A point of fracture in this story of *exclusive territorial authority* emerged in the period following World War II and the resumption of hostilities between the intra-Chinese belligerents. As the self-styled “nationalist” side of Chiang Kai-shek collided against the “communist” forces of Mao, the territory of China was subject to a constant drawing and redrawing process, changing masters in the course of the Civil War. Boundaries were in place internally, but both actors claimed the complete and final sovereignty upon the entire polity.

In a certain sense, this was a pre-Westphalian situation of overlapping demands to jurisdiction which sought to be resolved in the most Westphalian manner available: a mutually exclusive quest for absolute dominion upon a territorial unit. Sovereignty was affirmed in an intransigent language-game that became even more dysfunctional once the belligerents were spatially separated and refrained from military conflict. If Westphalia had one good use, it was exactly that: sorting out adverse claims and placing borders between them. (Geographical) territory was to be reinforced by the cold letter of the law.

However, the tale of the two competing Chinese sovereigns would prove to be different.

Once the military conflict was reined in during 1949–1950, it seemed that things would lead to a partition of the territory as Chiang Kai-shek and his remaining forces (along with civil administration) retreated from the mainland and transferred the entire “state” apparatus to the island of Taiwan. At the same time, Mao remained the—factually—undisputed hegemon of continental China, subjecting it to an intensive centralization process. While the nationalist forces maintained their claim to being the sovereign of the Republic of China (hereafter ROC), the communist side also considered itself to be the sole authority over the People’s Republic of China (hereafter PRC) whose advent it proclaimed in 1949.

While Hainan was conquered by Red China the following year and a nationalist

insurgence lingered in mainland China for some years, it appeared that the conflict of the two republics reached a stalemate. Each controlled—*de facto*—a clearly defined territory, but claimed—*de jure*—the sovereignty over the entire land (mainland China *plus* Taiwan). Both ROC and PRC maintained the theory of a *single, undivided and permanent* sovereignty upon greater China, although their exclusive territorial control was firmly established upon one portion or another of it. In a purely Westphalian setting, the issue would have been surgically solved: partition, demarcation and territorialization behind strictly imposed borders. Internal sovereignty would have been reflected externally.

Nevertheless, despite each polity consolidating its exclusive grasp of a given territory (ROC upon the island of Taiwan and several other small islands; PRC upon the mainland and all the other remaining islands), none of them seriously considered to use the Westphalian narrative in order to create a distinct (sovereign) state, independent of the other. Rather, both entities constructed a legal and political discourse aimed at affirming their undisputable authority upon the entire territory.

For these purposes, Westphalia—and the rules of international law—attained a different type of instrumentalization: a technical language-game devised to support the claim of that polity which uttered it. In a purely legal setting—although largely fictional for both accounts—ROC argued that its sovereignty was continuous from 1912 (without any interruption in 1949),³⁵ while the PRC leaders argued that since its proclamation this was the successor state of the ROC and all attributes of sovereignty were incorporated by the newly created Communist state.

The unusual confrontation resulted in a paradox: overlapping discourses of legal-political hegemony (both arguing for one “China” that is indivisible) while the controlled territories were practically demarcated and separated. Each party regarded the other as unlawful in its claims and refrained from admitting it any attributes of (veritable) sovereignty. For both, Westphalia—and its rules—meant little in practice. It only served as a narrative of self-legitimation, a linguistic—and legal—artifice deployed to conceal a more profound reality: the *persistence of the Sinocentric paradigm* in a modern and secularized international arena.

While the recognition issue varied over time—as an engagement with the “outside” world—the sovereignty impasse was decided only within this framework of a proclaimed single Chinese community. It was a “cross-strait” problem and it remained so. Both sides used Westphalia-as-discourse to speak to the global audience, but maintained a tight “internal” understanding of political power, of its sources and structures. When analyzed closer, this vision actually reflects a traditional Sinic approach to sovereignty: the center of the (Chinese) world is singular and imbued with unquestioned legitimacy. One must only find out *where* that center is in order to grasp the hierarchic out-spread of authority.

The essence of the initial PRC-ROC sovereignty debate appears different when followed from this perspective. If Taipei is the privileged holder of legitimacy—one that was transferred from the mainland in an Asian version of *translatio imperii*—it may not give in to pretensions of the PRC, not until it is assured that its undiluted—and unspoiled—sovereignty can safely “return” to the continent in full Sinic

regalia. Conversely, as it considers itself to be the “empire-in-exile” which might—if needed—even resist on its own, renouncing the actual control of the mainland which is just a territory beyond its control. On the other hand, if Beijing is the veritable *locus* of authority, it might even allow Taiwan its complete autonomy, when admitting to symbolically “pay tribute” to the center.

Therefore, the cross-strait great game was not one of affirming the exclusive territorial control of one polity, but rather a process of building up a privileged—and unique—*locus* of sovereignty. Both parties aimed to re-configure the “center” of the Sinic *oikumene* as a source of political legitimacy. And this is the reason why PRC and ROC are still so absorbed by each other and the stabilization of their relations. They may have admitted a series of Westphalian solutions—as temporary and superficial technical arrangements—but remained on the path of pursuing the (re)construction of a unified Chinese community.

In the end, each side saw itself as the sole bearer of legitimacy, as the “true” center of China. And, across the strait, *nothing but territory*.

The Cross-Strait Duplex: A Sovereignty Stalemate

Therefore, these initial positions determined both actors to conceal a vision—even if declaratively repressed—of Sinocentric (regional) order. Throughout the post-war period, each party adamantly maintained that it would launch itself into a “counterattack” to reclaim the mainland or into a “liberation” of the island, but gradually such rhetorical stances softened up and allowed for an even more curious dynamic: acknowledging the existing “duplex” reality³⁶ and searching ways for *cohabitation without settlement*. At least without a formal one. The Westphalian narrative proved powerless in either ensuring the conditions to reach over the strait, or in creating a definitive rift in its middle.

Dealing with a Shifting Recognition

The 1971 (and 1979) moment—when most of the “outside” world switched its diplomatic recognition to PRC instead of ROC—also marked a new phase for the cross-strait relations. Not only was the tactical approach modified, but also the applicable language-games. In this sense, the (now) confident mainland officials started to replace the concept of “liberation of Taiwan” with the more conciliatory one of “peaceful unification of the motherland.”³⁷ Such a formulation indirectly admitted that the insular territory was not one “occupied” by an enemy that needs to be expelled, but rather a part of a larger Chinese community that—at least temporary—was outside the PRC control.

For this reason, in 1981 and 1982, attempts to start reunification discussions were made by mainland representatives. The most articulate one—and conceptually sophisticated—was that proposed by Deng Xiaoping, offering the “concession” of “One Country, Two Systems,” later to be applied to Hong Kong and Macau. How-

ever, such a vision gained no adherence in Taiwan and the ROC authorities rejected the proposal, arguing that China (the overarching and complete polity whose sovereignty they still claimed) should “only have one good system, not two incompatible systems.”³⁸

No further progress was made in tackling the dilemma of cross-strait sovereignty³⁹ until the early '90s when Taiwan and communist China established two quasi-diplomatic mechanisms meant to be used in approaching the other side of strait. Thus, ROC deployed its newly-created Strait Exchange Foundation (SEF) to deal with the PRC-based Association for Relations Across the Taiwan Strait (ARATS) and—in 1992—the representatives of these special-purpose instruments reached an ambiguous agreement. The 1992 Consensus, as it became known, informally asserted that there is “one China, with different interpretations.” The fundamentals of “unity” were not questioned, but only the applicable hermeneutics in finding out what that China really is and how it can be considered “one.”⁴⁰

Ever since 1992 that became the basis of any negotiations, of any change of power in Taiwan and a source of political confrontation within the island’s political establishment. A year later, the PRC authorities (more precisely the Taiwan Affairs Office) issued their White Paper offering—again—the “peaceful reunification” through the failed formula of “One Country, Two Systems,” by building upon the terms of the Consensus and providing a distinct exegesis of their meaning.⁴¹ The ROC reaction was not even lukewarm. The status quo carried on without any change on the horizon.

However, starting with the mid-'90s, one could observe that Taiwan started to exhibit some sporadic attempts in affirming a distinctly insular *sovereign* entity. More precisely, in 1999, Lee Teng-hui used the troubling expression of “special state-to-state relations” which angered PRC authorities and seemed to break-up with the Consensus.⁴² A step further in this rhetoric-of-sovereignty was taken by the next president, Chen Shui-bian (of the DPP), who displaced the KMT establishment in 2000. Even though he started with his famous declaration of “four nots and one no,”⁴³ he soon argued that the cross-strait relations should be seen as interactions between “one state on each side (of the Straits).”

As this seemed to move to a rather Westphalian narrative of “independence” (and a move against its second White Paper⁴⁴), PRC also responded in a hardline Westphalian mode: fight against “secessionism.” Thus, in 2005, Beijing enacted its Anti-Secession Law which—legally—threatened to use “non-peaceful” means if Taiwan would move to declaring itself a separate state, outside the conceptual artifice of One China in two polities.⁴⁵ Things seemed to become serious and—gradually—both sides backed down their rhetoric-of-sovereignty.

Adapting to a Westphalian Aporia

With the return of the KMT to leadership, Ma Ying-jeou—the 2008–2016 President—moved to a more conciliatory tone in respect to PRC and endorsed a status quo approach. In his inauguration speech, he emphasized that the starting point for

cross-strait relations would be the 1992 Consensus and that his reign shall be based on the idea of “no unification, no independence and no use of force” by which the insular entity may afford to “maintain the status quo in the Taiwan Strait.”⁴⁶ Therefore, Westphalian hard-speech of either independence-secession or of unification with the mainland was reduced to a minimum, leaving only a lingering notion of (de facto) sovereignty, meant to prevent aggressive stances from PRC, rather than advancing a geopolitical position.

On the other hand, given the 2016 elections and the advent of the DPP back to power, it might be too soon to argue what precise conceptual direction Tsai Ing-wen’s presidency will take. However, she has already clearly stated in her recent National Day Address that “[t]he new government will conduct cross-strait affairs in accordance with the Constitution of the Republic of China, the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.” Moreover, she indirectly stressed the importance of the 1992 moment and the need to “cherish and sustain its accumulated outcomes.”⁴⁷

At first glance, the reference to the constitutional order and the acknowledgment of the 1992 process seem to point to a direction of stability, rather than one of confrontational rhetoric with the mainland.⁴⁸ Even though she represents the rather independence-minded DPP, Tsai Ing-wen appears to have taken note of a weariness in the public opinion regarding any tensions with PRC, preferring an ambiguous and ill-defined status quo that bears no challenge and no risk.⁴⁹

Therefore, if the Taiwanese more recent position on sovereignty would be analyzed closely—leaving aside the KMT-DPP versions of the island’s politico-ontological status—it might reveal that even the support for “independence” does not go so far as to *fundamentally* challenge the 1992 Consensus. As Richard Bush pertinently described the situation, even in its “recalcitrant” periods, “Taipei’s goal has not been to avoid being a part of China[...]. Rather, the issue was *how* Taiwan might be part of China—or more precisely, how the governing authority in Taipei would be part of the state called China” and not simply become a subordinate entity within PRC.⁵⁰ The limits of the sovereignty discourse were mostly confined to a “de facto” stance and its preservation in case of unification.

China—and not Taiwan/ROC as a self-standing separate state—still dominated the political imagery of the island’s elite. If this was a true belief in the beginning, it was inertially maintained afterwards in order to cope with the mainland’s carrot-and-stick approach, as well as with long-standing allies that did not wish to see the status quo disturbed. For these reasons, the “singular” China principle is still in place, as the island does not profess a “separatist” agenda in a European sense and it cannot appear to do so on the world stage. It is neither a Kosovo, nor a Catalonia. Not even a self-professed Ireland or an exotic version of Corsica. Analogies with other cases are radically flawed as they neglect the basic tenets of Taiwan’s existence and (greater) Chinese sovereignty.

This Westphalian *aporia*—and intentionally professed ambiguity—also explains why Taiwan (otherwise so direly endangered by PRC’s hegemonic narrative) still supports nowadays the mainland’s claims for the Nine-Dash Line that aims to dimin-

ish the sovereignty of PRC's neighbors over their territorial waters. In the context of the Permanent Court of Arbitration adverse decision against PRC establishing Philippines' rights in the South China sea, Tsai Ing-wen presidential office publicly argued that “[t]he decisions of the tribunal which impinge on the interests of the ROC, especially with regard to the status of Taiping Island, have seriously undermined the rights of the ROC over the South China Sea Islands and their relevant waters. The ROC government *does not accept any decisions that undermine the rights of the ROC, and declares that they have no legally binding force on the ROC.* The ROC government reiterates its firm position that the ROC has sovereignty over the South China Sea Islands and their relevant waters.”⁵¹

In other words, despite backing down the rhetoric of greater China in cross-strait relations and in the day-to-day discourse for the global agora, once the essence of Chinese (not PRC) sovereignty over its traditional sphere of hegemony was challenged, the Westphalian rules were given no importance. Only the historical argument of Chinese preeminence within its “undisputed” realm. And those are the true limits of Westphalia in this region of the world. It might work as a “deterrence” discourse for other power-players, but it has no weight in arriving at palatable regional status quo. At least not for the Chinese actor(s).

Conclusions: Beyond the Margins of Westphalia?

For all these reasons, it could be conclusively argued that Westphalian sovereignty is only professed in cross-strait relations when tensions are increasing. It is not assumed as a foundational paradigm, but only as an instrumental discourse meant to gain each actor some additional “leverage” in their great game: (1) while the mainland is brutalizing its stance, arguing for a strict Westphalian definition of Taiwan as a mere rebel/separatist province, (2) the insular position extends its “independence” language-game in asserting that its *de facto* sovereignty should—naturally—have evolved into a *de jure* sovereignty if it gazed in that direction.

However, in reality, Westphalia retains only a marginal understanding of the situation, resembling a crisis-discourse that does not accurately portray the essence of cross-strait relations. It is rather used as a geopolitical pressure-valve that deploys formal threats toward the other actor (and its allies). It is not meant to create new facts on the ground—or in diplomatic quarters—but to deter any regional or global players from disturbing the ambiguous (but entrenched) status quo.

Westphalia might seem to use the same vocabulary, but a different grammar applies.

Notes

1. This theory—although in a Western-based framework—was previously developed in Horia Ciurtin, “Paradoxes of (Sovereign) Consent: On the Uses and Abuses of a Notion in Inter-

national Investment Law,” in *ICSID Convention After 50 Years: Unsettled Issues*, ed. Crina Baltag (Kluwer Law International, 2017), p. 36 et seq.

2. As Martti Koskenniemi intuitively affirmed, there is a “metaphoric sense of Westphalia”—see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2004), p. 51.

3. Leo Gross, “The Peace of Westphalia, 1648–1948,” *American Journal of International Law* 42(20) (1948), p. 28. <https://doi.org/10.2307/2193560>

4. Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: McGraw-Hill, 1985), p. 294.

5. Stephen Krasner, “Westphalia and All That,” in *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, eds. Judith Goldstein and Robert O. Keohane (Ithaca, NY: Cornell University Press, 1993), p. 235.

6. In this regard, see the excellent historically documented study of Andreas Osiander, “Sovereignty, International Relations and the Westphalian Myth,” *International Organization* 55(2) (Spring 2001), p. 251.

7. For instance, see the image portrayed by Andreas Osiander, 2001, pp. 282–284. Or Stéphane Beaulac who argues that Westphalia “constitutes but one instance where distinct separate political entities strived for more power through independence, which was only achieved long after the Peace”—Stéphane Beaulac, “The Westphalian Legal Orthodoxy—Myth or Reality?,” *Journal of the History of International Law* 2(2) (2000), p. 151.

8. *Ibid.* p. 169.

9. See the content of the “Peace Treaty of Osnabrück between Emperor Ferdinand III and Queen Christina of Sweden and their respective allies, Osnabrück (October 14/24, 1648)” as translated from the Latin original in “Peace Treaties of Westphalia” in *German History in Documents and Images: Volume 1. From the Reformation to the Thirty Years War*, eds. Thomas A. Brady, Ellen Yutzy Glebe et al. (1500–1648), available online at http://germanhistorydocs.ghi-dc.org/pdf/eng/87.%20PeaceWestphalia_en.pdf, accessed 31 October 2017.

10. *Ibid.*

11. Derek Croxton, *Westphalia: The Last Christian Peace* (New York: Palgrave Macmillan, 2013), p. 3. https://doi.org/10.1057/9781137333339_1

12. Charles S. Maier, *Once Within Borders: Territories of Power, Wealth, and Belonging Since 1500* (Cambridge, MA: Belknap Press, 2016), p. 78. <https://doi.org/10.4159/9780674973909>

13. Wayne Hudson, “Fables of Sovereignty,” in *Re-envisioning Sovereignty: The End of Westphalia?*, eds. Trudy Jacobsen, Charles Sampford and Ramesh Thakur (Aldershot: Ashgate, 2008), p. 28.

14. Article VIII (1) of the Peace Treaty of Osnabrück talks about “*libero iuris territorialis tam in ecclesiasticis quam politicis exercitio*” or—in the German version—“*ungehinderten Ausübung der Landeshoheit sowohl in geistlichen als auch in weltlichen Angelegenheiten.*”

15. Derek Croxton, “The Peace of Westphalia of 1648 and the Origins of Sovereignty,” *The International History Review* 21(3) (1999), p. 591 (our emphasis in the original text). <https://doi.org/10.1080/07075332.1999.9640869>

16. Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), p. 20. <https://doi.org/10.1515/9781400823260>

17. Ciurтин, 2017, p. 38.

18. See, for instance, David Kennedy’s depiction of this relation which affirmed that “people remember 1648 because they associate it with the origin of the complex process of intellectual and institutional reinvention through which it came to be a matter of common sense that the politics of the world would be organized around sovereign states: a transformation that took more than three hundred years to achieve.”—David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Oxford: Princeton University Press, 2016), p. 20.

19. This constative-performative (often apparent) distinction is best presented in Austin’s classical account on speech acts—see John L. Austin, *How to Do Things with Words*, 2nd edition (Oxford: Oxford University Press, 1975).

20. As usual, the Schmittian account of this narrative is an excellent theoretical and historical depiction of the process—see Carl Schmitt, “Der neue Nomos der Erde,” *Gemeinschaft und Gesellschaft: Zeitschrift für soziale und politische Gestalt* 3 (1955).

21. Joseph Camilleri, “Sovereignty Discourse and Practice—Past and Future,” in Jacobsen, Sampford and Thakur (eds.), 2008, p. 35.

22. Heinz Duchhardt, “The Peace of Westphalia: A European Peace,” in *The Ashgate Research Companion to the Thirty Years’ War*, eds. Olaf Asbach and Peter Schroder (Aldershot: Ashgate, 2014), p. 309.

23. In this sense, one could not avoid thinking this as a legal paraphrasing of Heidegger’s (in)famous excursus on technology. Only that—for the purposes of our study—we must take into consideration a construct of law-as-technology. See Martin Heidegger, “The Question Concerning Technology,” in *Martin Heidegger: Basic Writings*, ed. D. F. Krell, revised and expanded edition, translated by W. Lovitt with revisions by D. F. Krell (London: Routledge, 1993), pp. 311–341.

24. In this sense, see the excellent account of Japan’s use of sovereignty and international law for integrating in the European great game of hegemony by Douglas Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (New York: Palgrave Macmillan, 2016).

25. For instance, the manner in which Western powers used the fiction of extraterritoriality to extend their sovereignty and limit their Asian counterparts’ sovereignty in the 19th and 20th centuries—see Douglas Howland, “The Foreign and the Sovereign: Extraterritoriality in East Asia,” in *The State of Sovereignty: Territories, Laws, Populations*, eds. Douglas Howland and Luise White (Bloomington & Indianapolis: Indiana University Press, 2009), pp. 35–55.

26. Asian powers themselves engaged in power games and legitimation sovereignty discourses in order to challenge each other’s territorial boundaries, resembling the European actors’ behavior and also taking it a step further—see, for example, the disputes around Manchuria in David Tucker, “Colonial Sovereignty in Manchuria and Manchukuo,” in Howland and White (eds.), 2009, p. 84 et seq.

27. Confucian principles laid the foundations of this model with its hierarchical vision of social order and need for stability.

28. A classical account in this regard is that of Gerrit W. Gong, “China’s Entry into International Society,” in *The Expansion of International Society*, eds. Hedley Bull and Adam Watson (1984), p. 173 et seq. Also see the description of Fairbank which stated that the Emperor’s authority “not only reached throughout China proper but continued outward beyond the borders of China to all mankind [...] as parts of a concentric hierarchy”—see John K. Fairbank, “A Preliminary Framework,” in *The Chinese World Order: Traditional China’s Foreign Relations*, ed. John K. Fairbank (Cambridge, MA: Harvard University Press, 1968), p. 8.

29. Yongjin Zhang, “Curious and Exotic Encounters: Europeans as Supplicants in the Chinese Imperium, 1513–1793,” in *International Orders in the Early Modern World: Before the Rise of the West*, eds. Shogo Suzuki, Yongjin Zhang and Joel Quirk (London: Routledge, 2014), pp. 56 et seq.

30. Shogo Suzuki, *Civilization and Empire: China and Japan’s Encounter with European International Society* (London: Routledge, 2009), p. 39.

31. Zhang, 2014.

32. As Antony Anghie pertinently showed, this was the age in which positivist jurisprudence “claimed that international law was the exclusive province of civilized societies,” thus separating the “center” from the “periphery” in a European-dominated Westphalian setting—see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), p. 53.

33. Zhang, 2014, p. 58.

34. The Treaty itself used a language of sovereign equality and—at the same time—coerced China to admit the establishment of British diplomatic missions on its territory—see Suzuki, 2009, p. 58.

35. For more details upon this troubled part of Chinese history, see Denny Roy, *Taiwan: A Political History* (Ithaca, NY: Cornell University Press, 2003); Jonathan Manthorpe, *Forbidden Nation: A History of Taiwan* (New York: Palgrave Macmillan, 2005).

36. This “duplex” metaphor was coined by Richard C. Bush who portrayed it as an “imaginary duplex [...] known as China. The PRC ‘family’ inhabits one dwelling and the ROC ‘family’ the other.”—see Richard C. Bush, *Untying the Knot: Making Peace in the Taiwan Strait* (Washington, D.C.: Brookings Institution Press, 2005), p. 104. In these terms, he followed the relations between

the two “patriarchs” of the dwellings and how they claimed—initially—to be the owners of the entire duplex structure, followed by an interaction that allowed their authority to be defined in different ways, without reaching a veritable compromise.

37. Kevin G. Cai, “Introduction: Cross-Taiwan Straits Relations Since 1979,” in *Cross-Taiwan Straits Relations Since 1979: Policy Adjustment and Institutional Change Across the Straits*, ed. Kevin G. Cai (Singapore: World Scientific Publishing, 2011), p. 2.

38. Ma Ying-jeou, “Taiwan’s Approach to Cross-Strait Relations,” *Aspen Institute*, Working Paper (January 2003), p. 30.

39. However, a certain symbolic step was taken in 1987 when the ROC authorities allowed their subjects to visit relatives on the mainland and thus stopping a several-decade interdiction to travel to PRC territory.

40. For precise details upon the language used in the 1992 Consensus, see Xu Shiquan, “The 1992 Consensus: A Review and Assessment of Consultations Between the Association for Relations Across the Taiwan Strait and the Straits Exchange Foundation,” *American Foreign Policy Interests* 23 (2001), pp. 121–140.

41. See Taiwan Affairs Office of the State Council, “The Taiwan Question and Reunification of China,” *Beijing*, August 1993, http://www.gwytb.gov.cn/en/Special/WhitePapers/201103/t20110316_1789216.htm, accessed 22 October 2017.

42. See George W. Tsai, “Cross-Taiwan Straits Relations: Policy Adjustment and Prospects,” in Cai (ed.), 2011, p. 120.

43. More precisely, he pledged in his inaugural speech that “I will not declare independence, I will not change the national title, I will not push for the inclusion of the so-called state-to-state description in the constitution, and I will not promote a referendum to change the status quo in regard to the question of independence or unification. Furthermore, there is no question of abolishing the Guidelines for National Unification and the National Unification Council.”—*apud* Ma, 2003, p. 31.

44. See the Taiwan Affairs Office of the State Council, “The One-China Principle and the Taiwan Issue,” *Beijing* (2000), available at http://www.gwytb.gov.cn/en/Special/WhitePapers/201103/t20110316_1789217.htm, accessed 22 October 2017.

45. Tsai, 2011, pp. 123–124.

46. Lee Ming, “Cross-Taiwan Straits Relations and Ma Ying-jeou’s Policy of Diplomatic Truce,” in Cai (ed.), 2011, p. 196.

47. See President Tsai’s 2016 National Day Address, 10 October 2016, <http://www.mac.gov.tw/ct.asp?xItem=115684&ctNode=7909&mp=3>, accessed 22 October 2017. An interesting thing to note is her reference to the Act Governing Relations between the People of the Taiwan Area and the Mainland Area whose provisions are in affirming that mainland China is part of the “territory of the Republic of China outside the Taiwan Area” (art. 2.2).

48. For more details, see David G. Brown and Kevin Scott, “China-Taiwan Relations: Taiwan Sets a New Direction,” *Comparative Connections* 18 (1) (May 2016), pp. 67–78.

49. Some authors coined this trend as a “fading” independence movement who lost any serious ground—see Robert S. Ross, “Taiwan’s Fading Independence Movement,” *Foreign Affairs* 85 (2) (March/April 2006), pp. 141–148. On the other hand, it is uncertain how low (or high) the support is for independence given that no one really wants to compound PRC threats.

<https://doi.org/10.2307/20031917>

50. Bush, 2005, p. 81.

51. See the press release from the Office of the President, 12 July 2016, <http://www.mac.gov.tw/ct.asp?xItem=115097&ctNode=5908&mp=3>, accessed 22 October 2017.

Although it has taken some steps to soften its rhetoric, Taiwan still formally maintains the claim that China (itself) should benefit of the entire zone comprised within the line—see Lynn Kuok, “Tides of Change: Taiwan’s Evolving Position in the South China Sea—And Why Other Actors Should Take Notice,” *The Brookings Institution—Center for East Asia Policy Studies*, East Asia Policy Paper 5 (May 2015).

Biographical Statement

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Territorial Dispute Strategies as Diversionary Behavior

Krista E. Wiegand

Structured Abstract

Article Type: Research Paper

Purpose—When leaders choose to divert the populace’s attention from domestic problems to foreign disputes, are there peaceful options to pursue diversion other than use of force? Building on diversionary force theory and foreign policy substitutability, this study tackles the continuing debate about how domestic unrest could lead to diversions and what constitutes diversionary behavior. The theory presented is that leaders of states claiming disputed territory can use demands for peaceful dispute resolution (negotiation, mediation, etc.) to divert attention from moderate domestic unrest, initiating a militarized interstate dispute (MID) in the territorial dispute more likely to occur under severe domestic unrest, and economic unrest has no effect.

Design, Methodology, Approach—This study examines the strategies of challenger states involved in territorial disputes across the world from 1945 to 2007—maintaining the status quo, demanding resolution of the dispute, or initiating a MID. To test the hypotheses about the effects of moderate political unrest, severe political unrest, and economic unrest, the analysis uses multinomial logistic regression models and graphed marginal effects.

Findings—The findings show overall support for the hypotheses. First, resolution demands are more likely to occur when challenger states are experiencing moderate political unrest. Second, MIDs are more likely to be initiated when challenger states are experiencing severe political unrest. Economic unrest has no statistical significant influence on resolution demands or MIDs.

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Practical Implications—The study contributes to the debate in the literature about diversionary force theory, as well as the territorial dispute literature, emphasizing the role of domestic politics on interstate conflict management.

Originality Value—The study discusses an alternative strategy for leaders of states involved in territorial disputes to deal with domestic unrest and diversion by pursuing resolution demands and not just threats or uses of force.

Key words: dispute resolution, diversionary theory, domestic unrest, MIDs, territorial disputes

Introduction

Domestic vulnerability of leaders or governments is a frequent occurrence in many states, sometimes leading to diversionary behavior—leaders using external military force to divert attention away from domestic problems. The general assumption is that to divert from domestic problems, leaders must use threats or some degree of military force. The Argentine junta’s decision to invade the Falkland/Malvinas Islands in 1982 was partially a means to divert attention from growing domestic unrest in Argentina. Yet the junta was not the only Argentine leaders to divert attention from domestic vulnerability. Since the conclusion of the war, many Argentine leaders have used the Malvinas territorial claim against the United Kingdom to divert from domestic problems, not through threats of force or actual uses of force, but instead through demands for resolution, a peaceful strategy.¹

The purpose of this study is to tackle the continuing debate about the domestic conditions that lead to diversions and what constitutes diversionary behavior—whether leaders are more likely to pursue threats or uses of force, known as militarized interstate disputes (MIDs), or whether leaders pursue non-violent strategies to divert from domestic unrest. I argue that leaders of states claiming disputed territory specifically do, in fact, pursue non-violent foreign policy strategies as domestic diversions, depending on the conditions of domestic problems facing the leader. Along with the typical threats or uses of force that diversionary theory explains, this study presents the possibility that leaders can pursue demands for resolution of disputes under certain conditions.

Because of the salience of territorial disputes and the concern that citizens often have about territorial claims, leaders of challenger states should be able to effectively mobilize citizens by engaging in either attempt—forceful or peaceful—to resolve a territorial dispute by gaining territorial concessions, depending on whether the domestic despair that leaders experience are moderate, severe, political, or economic.² This study builds off of research on foreign policy substitutability and diversionary use of force, and examines the conditions under which diversionary behavior occurs, fleshing out the type of domestic despair—political, economic, or both—and the degree to which political unrest in particular makes diversionary behavior most likely to occur. I argue that under moderate domestic unrest, pursuing demands for resolution as diversionary behavior is more likely, while leaders experiencing

severe domestic unrest are more likely to pursue MIDs, and with economic vulnerability, neither strategy is attractive to leaders.

The remainder of the paper is organized as follows. First, I review previous research on diversionary force and foreign policy substitutability theory and discuss the previous findings about political and economic domestic unrest. I then present a theory of how MIDs and demands for resolution can both be used as forms of diversionary behavior, but each strategy should depend on the level of negative domestic conditions that leaders are experiencing. After outlining the research design, I present the findings, which show generally that moderate domestic unrest increases demands for resolution, severe domestic unrest increases the likelihood of MIDs, and economic unrest has no effect.

Diversionsary Force Theory

Studies of diversionary use of force, defined as military and diplomatic actions “undertaken for the purposes of enhancing one’s internal political support,”³ have focused on interstate use of force regardless of the specific issue disputed, ranging from low intensity threat of force to full scale war. Applying observations of small group cohesion when faced with external threats⁴ to state behavior, the theory of diversionary force argues that leaders can use an external threat to unify the populace domestically as a form of a principal-agent model.⁵

The empirical and case study record about diversionary force theory is mixed. Some studies show that leaders are more likely to use force in interstate disputes if their domestic positions are vulnerable, while other research does not find support for this theory.⁶ There is some evidence that leaders use diversionary force to rally support of the domestic populace under domestically unstable conditions.⁷ Several studies have revealed no systematic or case specific evidence that leaders took diversionary actions to mobilize domestic support.⁸ Using different research designs and theoretical questions, other studies have demonstrated evidence that leaders do in fact use diversionary use of force to rally support of the domestic populace under domestically unstable conditions, difficult economic conditions, or challenging political circumstances for leaders.⁹ Much research on diversionary force focuses on observations of use of force by leaders of one state, particularly the U.S.,¹⁰ the United Kingdom,¹¹ and Argentina.¹²

Diversionsary theory focuses almost exclusively on the strategy of pursuing force to divert attention away from domestic problems. Scholars have not yet been able to definitively agree on what causes diversion, if it occurs at all—poor economic performance, unpopular policies, scandals, low levels of popular support, or other domestic political factors. Types of domestic unrest can include both political and economic factors. Economic factors correlated with diversionary force in previous research include high inflation rates within states involved in enduring rivalries,¹³ high inflation rates in states experiencing ongoing contentious issues, including territorial disputes, maritime claims, and river disputes,¹⁴ declining economic perform-

ance,¹⁵ measured by change in gross domestic product (GDP),¹⁶ and GDP per capita levels.¹⁷ Some research argues that leaders are more likely to divert when the economy is weak or economic performance is low because leaders will make tradeoffs between foreign policy and economic performance.¹⁸ Several other studies have found contrary results, indicating that either economic problems have no effect or a reverse effect on diversionary force.¹⁹ Jung (2014) argues that economic vulnerability is not an effective measure of domestic unrest since political vulnerability can still occur for leaders even when economies are strong.²⁰

Political factors associated with diversionary force include unpopularity of the leader and/or government and regime type,²¹ weak party cohesion or opposition to the leadership within the legislature,²² upcoming executive elections,²³ the political leaning of a government,²⁴ and popular unrest in the form of anti-government demonstrations, general strikes, riots, and/or purges and government crises,²⁵ as well as domestic unrest interacted with regime type.²⁶ The research pursued in this study attempts to address some of the disagreements in the diversionary literature, broaden the foreign policy options in diversionary behavior, and better specify the conditions under which diversion may occur by examining levels of domestic unrest.

Territorial Disputes as Ideal Diversions

Building on the theory of diversionary force, it makes sense that leaders of states claiming territory could use MIDs or demands for resolution to rally a populace specifically about a territorial dispute, as with other types of interstate disputes.²⁷ Territorial disputes are ideal as a diversionary issue because most of them are ongoing disputes that their populations know about, so vulnerable leaders do not need to invent foreign disputes to justify diversions. In order to divert attention from domestic problems, there must be a perceived or real condition of dyadic tension or hostility with an opposing state. As with enduring rivalries,²⁸ there is a significant foreign policy opportunity with territorial disputes,²⁹ a condition ranging from minimal dyadic tension to major hostility, of which leaders can take advantage to mobilize domestic support.

Diversions for leaders of challenging states are also quite feasible because it is difficult for leaders of target states to avoid potential force or other strategies when involved in a territorial dispute. The target's involvement in a contentious territorial dispute makes the strategic conflict avoidance argument less applicable,³⁰ which argues that target states are likely to avoid conflict with states experiencing domestic vulnerabilities. In territorial disputes, a target state cannot avoid the challenger state's territorial claims and potential subsequent threats to ownership of the disputed territory since the target states maintain status quo control of the disputed territory. Mitchell & Thyne (2010) argue and find support for the notion that it is not just the opportunity of an interstate dispute, but that territorial disputes are more salient issues, providing greater incentive for diversion.³¹ More specifically, they find that when ongoing contentious issues—including territorial disputes—

exist between a dyad, there is more opportunity for diversionary behavior. Territorial disputes therefore act as a longstanding issue, providing an ideal opportunity for diversionary behavior.

Like rivalries, territorial disputes provide the ideal conditions for diversion due to the salience of the contentious issue and the opportunity that longstanding territorial disputes provide to leaders in need of foreign policy issues with which to divert the populace from domestic problems. An important factor in the ability to divert is for leaders to rally their populaces to support the government against a perceived national threat by an adversary, for example, stirring strong nationalist sentiments about acquisition of the (perceived) homeland. Disputed territory is an issue that is likely to unite domestic audiences behind leaders.³² Hensel Mitchell, Sowers & Thyne (2008) show that, compared to river and maritime disputes, territorial disputes are five times more likely to see MIDs compared to other contentious issues, and these same disputes are also significantly more likely to be subjected to peaceful resolution demands as compared to maritime claims.³³

Because disputed territory holds such salience as a disputed issue, feelings about the security of the national territory and borders are often emotionally charged.³⁴ As a result, the domestic populace tends to immediately support policies to acquire territory that is perceived to be rightfully theirs. Leaders can take advantage of this sentiment by making promises to right an injustice that resulted from a change in territorial ownership or a perception of unjust control by the target state.³⁵ This “rally around the flag” effect is likely to occur for leaders in both democracies and authoritarian regimes involved in territorial disputes due to the high level of issue salience. An illustration of such mobilization is the January 1995 border conflict fought between Ecuador and Peru when:

there were immediate political and military interests involved in the eruption of the dispute at this particular time, due to the declining support for both national presidents ... these political actors were able to mobilize the population around issues of territory, nationhood and the Amazon in ways which can throw light on the nature of national identities and their relationship with place.³⁶

In addition to threatening or using force, domestically vulnerable leaders can also pursue other diversionary strategies.³⁷ Here I propose that leaders can use demands for dispute resolution as diversionary behavior in order to mobilize populations under the right conditions. This argument relies on the assumption of foreign policy substitutability, in which leaders have multiple foreign policy options to pursue in response to the same stimulus³⁸ or that leaders can pursue multiple strategies, not just diversionary force.³⁹ Since leaders can respond to crises with multiple foreign policy (or domestic) options, then leaders could pursue demands for resolution just as they would pursue threats or uses of force in territorial disputes to act as diversions. This possibility of foreign policy substitutability, also referred to as the policy alternatives approach,⁴⁰ suggests not only that one should consider a different independent variable when studying domestic vulnerabilities, but also that there has been misspecification of diversionary behavior⁴¹ or that leaders can pursue multiple strategies, not just diversionary force.⁴²

Substitutable strategies in response to domestic unrest can include several strategies: repression,⁴³ domestic diversion,⁴⁴ military spending and conflict initiation,⁴⁵ or a variety of non-conflict foreign policy actions, such as benevolent military missions for humanitarian reasons.⁴⁶ Other strategies include application of economic sanctions or personal diplomacy (trips and/or summits),⁴⁷ aggressive trade policies,⁴⁸ or cooperative behavior including international negotiations,⁴⁹ concessions to opposition groups,⁵⁰ de-escalation of strategic rivalries,⁵¹ attempted termination of enduring rivalries,⁵² and resolution attempts in territorial disputes, the foreign policy strategy addressed here.

In order to divert attention, leaders do not necessarily need to use force, but must be perceived as active and engaged in the territorial dispute.⁵³ As with diversionary force, the demand for resolution of a dispute over territory can serve as a means to rally the populace, mobilizing support for the leader in his or her attempt to acquire the disputed territory. Though it may seem that such resolution attempts are cooperative, on the contrary, most demands for resolution are considered to be hostile, causing significant tensions between the disputing states. An example of mobilization around a demand for resolution is the attempt in July 1984 by President Raul Ricardo Alfonsin of Argentina to press for sovereignty of the disputed islands and the carefully planned out execution of domestic mobilization efforts in Argentina. Prior to the start of the talks, Alfonsin gave a national speech, “evidently meant to prepare highly sensitive public opinion” about the negotiations.⁵⁴ Such statements about demanding sovereignty talks or some other form of resolution method can act as focal points around which citizens can rally around the disputed territory. By engaging in rhetoric about territorial claims while demanding sovereignty negotiations or third party involvement, leaders of challenger states can rally domestic support for the cause of acquiring the claimed territory, in a similar manner that they do by pursuing a MID, a form of foreign policy substitutability.

Since the settlement of a territorial dispute is generally considered to be a “major innovation in the international security system,” leaders who have the political interest to peacefully attempt the settlement of territorial disputes are more likely to do so.⁵⁵ Even if a leader is unsuccessful in getting the adversary to the bargaining table or settling the dispute altogether, the very demand for negotiations or third party involvement itself acts as an indicator of the leader putting forth a good faith effort and showing resolve to treat the territorial dispute with utmost priority, for which he or she is likely to be rewarded.

What matters is the effort of the leader to demand resolution of the dispute, regardless of whether the opposing state responds or even if negotiations take place. If leaders are demanding resolution of a dispute primarily for diversionary purposes, if dispute resolution does occur, such leaders should not agree to any actual concessions, but give the appearance of trying to acquire the disputed territory. If negotiations or another form of dispute resolution do occur, leaders of challenger states can easily blame failed attempts on the stubbornness of the target state’s government or the unfairness of a tribunal or court ruling on a dispute.⁵⁶ Since territorial disputes are generally long and enduring like rivalries, and demands for resolution can be

made repeatedly, populations are less likely to forget leaders' demands to settle disputes as they would likely do with a past armed conflict that involved a one-time issue. Unlike engagement in MIDs, demands for resolution can have much higher rewards than costs especially since they tend to be repeated. This way, the leader still gets the benefit of rallying the populace through a diversionary tactic of demanding resolution, but does not necessarily risk domestic punishment.

Since a wide range of conditions could be considered as domestic political unrest, it is useful to break down such conditions based on severity,⁵⁷ and make different predictions about the likelihood of MIDs and resolution attempts. With more moderate political despair, if leaders can pursue peaceful resolution rather than potentially costly and risky initiation of MIDs and effectively divert the domestic populace, it is logical for leaders to pursue such a strategy rather than through MIDs. Demands for resolution can act as a less costly and less risky means by which leaders can mobilize around territorial claims. Under these conditions, leaders can make the case that they are working hard to (re)acquire disputed territory thought to be highly salient by the populace and therefore effectively mobilize them behind the leaders and/or government in order to divert from these more moderate conditions of domestic vulnerability. Yet, under conditions of severe political despair such as mass riots and other violent unrest, demands for resolution would probably be ineffective as for diversionary purposes and only MIDs would suffice to effectively divert.

Domestic Unrest

Moderate levels of domestic unrest, such as unpopularity of the leader and/or government displayed through political demonstrations would seem to be more likely to inspire leaders to divert attention differently compared to more severe types of political vulnerability, such as revolutions, riots, purges, and government crises. With moderate unrest, there is no real violence, so leaders are mainly receiving signals of discontent from the populace, but not direct threats to the government. Because the threat to leaders' survival in office is not as severe under these conditions, using an equally severe and costly policy of diversionary force would not be rational. Because of potentially higher costs and risks associated with MIDs and the fact that diversionary force can backfire, force is arguably not the most cost effective means to divert attention under conditions of moderate political despair. Diversions involving MIDs tend to be popular, but they can be costly and risky since leaders are not certain whether they will be successful, and war may result, such as the Falklands War of 1982. Additionally, use of diversionary force generally provides only short term or relatively low positive gains for domestically vulnerable leaders.⁵⁸

Therefore, since "the costs of armed diversion are indeed prohibitive, it is perhaps more reasonable to assume that less costly foreign policy actions which can rally patriotic feelings are preferable to the use of force."⁵⁹ A more cost effective and less risky means to divert for leaders experiencing moderate domestic unrest would be to still make some kind of effort to gain disputed territory by demanding sovereignty talks or third party involvement in the dispute. Therefore, leaders experiencing

moderate political despair do not need to pursue MID in international disputes to divert attention from moderate domestic unrest. Leaders can instead substitute their foreign policy of potentially diverting with force with demands of peaceful resolution, a much less costly and risky policy option, and one that is a more appropriate response to moderate domestic unrest. Since demands for resolution are cheaper and less risky, we should expect to see demands for resolution as more likely than pursuing MID when the domestic political unrest is moderate.

Yet, when leaders are experiencing severe forms of political despair, such as riots, purges, and government crises, they are actually so vulnerable to forcible removal from office that initiating a MID in the form of threat of force or low use of force, which could escalate to armed conflict, is not much riskier if defeated. Severe forms of domestic unrest, as defined here, involve violence and more intense threats to leaders or governments. Under severe domestic unrest, a more appealing strategy would be to achieve the payoff of effectively mobilizing the domestic populace through diversionary force. Leaders that are already experiencing strong negative sentiment from severe domestic unrest are already at a higher risk level than leaders with moderate domestic unrest. Therefore, desperate leaders whose survival in office (or even their own lives) is at a higher level of risk already should be more willing to seek a “hail Mary” and pursue a MID—not a war—since this could (1) benefit the leader through diversion, and (2) not extend the risk to leadership that much as it already stands.

Leaders “gain a private benefit from conflict—the increased likelihood of staying in power,”⁶⁰ suggesting that leaders experiencing severe domestic problems should be more willing to take riskier chances with MID in an attempt to divert from domestic problems. Likewise, with severe political despair, demanding resolution would not serve sufficiently to divert compared to MID since such demands would probably be drowned out by the severe domestic conditions or have limited ability to divert due to the chaotic conditions. Based on this logic, two hypotheses can be tested:

Hypothesis 1: *Moderate domestic political unrest will make it more likely that leaders will demand resolution of territorial disputes and less likely to initiate MID.*

Hypothesis 2: *Severe domestic political unrest will make it less likely that leaders will demand resolution of territorial disputes and more likely to initiate MID.*

Research Design

This study evaluates the likelihood of MID initiation compared to demands for resolution in territorial disputes. The analysis used to test the hypotheses is a cross-sectional time series, with a spatial domain of all territorial disputes from 1945–2007. The unit of analysis is non-directed dyad dispute year, focusing on the challenger state behavior in a territorial claim year.⁶¹ The dependent variable is a

categorical variable measuring conflict management strategies of the challenger state, coded 0 if the challenger state maintained the status quo, (1) if it made any demand to the target state for a peaceful resolution of a territorial dispute, and (2) if it initiated a militarized interstate dispute (MID) against the target state in any given year.⁶² A multinomial logistic regression is used to test the hypotheses and marginal effects are graphed and presented as figures.

Demands for resolution includes any demand to meet through bilateral negotiations to discuss sovereignty, or demands by the challenger issued to the target to invite mediation by third parties, arbitration by third parties, or to agree to adjudication by an international court.⁶³ The data on demands for resolution are borrowed from Huth and Allee (2002), which were updated by Wiegand & Powell (2011)⁶⁴ to 2007 and added third party resolution attempts to the data. The data on MIDs are borrowed from the Dyadic MID data set available from the Correlates of War (COW) Project.⁶⁵ All data coded in the MID dataset having an objective of territorial revision are included in this data set and include both threats and uses of force, regardless of hostility level.⁶⁶

Consistent with the literature, to flesh out the effects of different domestic despair conditions, and as robustness checks on the models, I use a variety of indicators of domestic unrest. The main domestic unrest variables are all from the *Cross-National Time-Series Data*,⁶⁷ and are lagged one year to test the effect on diversion in the near future. For moderate political vulnerability, I use general strikes and anti-government demonstrations. These measures are used in previous studies by Ghosh & Rhomey (2011), Oakes (2012), and Tir (2010).⁶⁸ General strikes are those that include strikes of 1,000 or more workers, aimed at national government policies or the government authority, and anti-government demonstrations refer to peaceful public gatherings of at least 100 people “for the primary purpose of displaying or voicing their opposition to government policies or authority, excluding demonstrations of a distinctly anti-foreign nature.”⁶⁹ In the data, the mean of general strikes per year is .13 and the maximum per year is 13, while there is a mean of almost 1 anti-government demonstration per year and a maximum of 60 per year. Both of these activities are considered here to be indicators of moderate political vulnerability because they do not include any levels of violence, nor do they provide an immediate risk of being removed from office for the leader.

For severe vulnerability, I use government crises and purges as indicators, consistent with Jung (2014),⁷⁰ and for a robustness check, I also test riots. Major government crises are coded as “any rapidly developing situation that threatens to bring the downfall of the present regime—excluding situations of revolt aimed at such overthrow,” and purges are defined as “any systematic elimination by jailing or execution of political opposition within the ranks of the regime or the opposition.”⁷¹ There is a mean of .26 government crises and a mean of .3 purges, with a maximum of seven and 13 respectively. Both of these measures are considered indicators of severe domestic unrest because they both involve violence and such conditions make it more likely that leaders could actually be removed from office.⁷² Riots are considered to be demonstrations or clashes of more than 100 citizens that involve violence,

hence they are also considered more severe domestic unrest than general strikes or anti-government demonstrations, and therefore more threatening to the leader and government.⁷³ In the data, there is a mean of almost 1 riot per year, a maximum of 55 per year, and a standard deviation of 3.2 riots per year.

With regard to control variables included in the models, I first include a variable to control for economic domestic unrest, which is another typical factor used to study diversionary force. For this variable, I use percentage of GDP growth rates, borrowed from *Penn World Tables* version 6.3.⁷⁴ Factor loadings show that GDP growth rates are unique to the domestic unrest indicators tested, indicating that each of these factors can be tested on its own.⁷⁵

Another important control variable is the influence of value or salience of territory, which is generally a strong indicator of conflict management.⁷⁶ To measure if the territory under dispute has value or salience, I use a dummy variable that determines whether there is ethnic value, strategic value, or economic value.⁷⁷ Ethnic value exists if members of a same ethnic group in the challenger state live across the border in the target state.⁷⁸ Strategic value exists if disputed territory is located at or near military bases, major shipping lanes, or choke points for ships, and economic value exists if the territory is located at or near a significant amount of natural resources, such as fishing grounds, oil, iron, copper, or diamonds.⁷⁹

Another key variable from the literature on conflict management to consider is regime type. A common argument is that democracies are less likely to use force and more likely to attempt resolution of territorial disputes through peaceful means.⁸⁰ To control for these findings, I include the Net Democracy Score for the challenger state from the Polity IV data. Based on previous findings in the literature, the expectation is that leaders of democratic states will be less likely to pursue MIDs and more likely to demand peaceful resolution and vice versa.

I also control for relative power between challenger and target states, based on the Correlates of War's National Capabilities Index,⁸¹ determined by the ratio of the challenger's CINC scores to the target state's CINC scores. States are expected to be more likely to pursue MIDs when there is power parity. I also include a dummy variable noting whether the challenger and target had past conflict, which is known to strongly influence future dispute strategies.⁸² Lastly, I include peace years to control for the number of years since the challenger state last engaged in a militarized dispute against the target state, as well as peace years squared and cubed to control for temporal dependence.⁸³ The expectation is that the initiation of MIDs is less likely as time passes from the last conflict. Examining the influence of these control variables together with domestic political and economic vulnerabilities should provide for a broader understanding for diversionary behavior.

Empirical Analysis

Overall, the models provide fairly strong support for the idea that domestic unrest influence decisions to initiate both MIDs *and* resolution demands as forms

of diversion, but it depends on whether domestic unrest is moderate or severe, and specifically the operationalization of the variable. Table 1 presents the results of a multinomial logistic regression model, with the conflict management strategy of maintaining the status quo as the base outcome. Figures 1, 2, and 3 present graphed first differences for different measures of moderate and severe political unrest respectively, holding all other variables at their mean or mode.

VARIABLES	<i>Model 1</i> Resolution Demand	<i>Model 1</i> MID
General Strikes	0.220*** (0.0733)	-0.0670 (0.0767)
Demonstrations	-0.0187 (0.0314)	-0.0316 (0.0274)
Govt Crises	-0.154* (0.0791)	-0.0957 (0.0763)
Purges	0.0224 (0.0733)	0.326*** (0.0568)
Riots	-0.0466 (0.0334)	0.0829*** (0.0259)
# of Past MIDs	0.415*** (0.0464)	0.360*** (0.0465)
Democracy	0.0266*** (0.00664)	-0.0167** (0.00676)
GDP Growth	0.00509 (0.00612)	0.000298 (0.00605)
Value/Salience	0.232 (0.162)	-1.082*** (0.132)
Power Ratio	-0.276 (0.361)	-0.621* (0.348)
Peace Years	-0.0145 (0.0186)	-0.126*** (0.0197)
Constant	-0.646* (0.350)	1.196*** (0.327)
Observations	2,782	2,782

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 1. Dispute Strategies and Domestic Unrest—1945–2007

The most significant finding is that moderate factors of domestic unrest—as measured by general strikes—is more likely to lead to peaceful resolution attempts, as predicted by Hypothesis 1. Moderate domestic unrest using general strikes is statistically insignificant for MIDs, providing no rejection for this part of Hypothesis 1. The alternate measure of moderate domestic unrest—anti-government demonstrations—is not statistically significant for either dispute strategy. As shown in Table 1, the coefficient for higher levels of general strikes is significant and positively associated with the likelihood of resolution demands. As the number of general strikes increase from none to seven, the likelihood of resolution attempts

increase by 60 percent, as shown in Figure 1. When moving from none to just one general strike per year, resolution demands increase by 20 percent. These substantive findings about moderate domestic unrest as measured by general strikes provide support for the argument that frustrations with leaders and/or governments at a more moderate level are likely to influence leaders' decisions about foreign policy options not involving force. This finding helps to explain the particular timing of resolution attempts, suggesting that when leaders or governments experience moderate levels of domestic unrest, leaders are more likely to demand resolution, while there is no influence of general strikes on the likelihood of force.

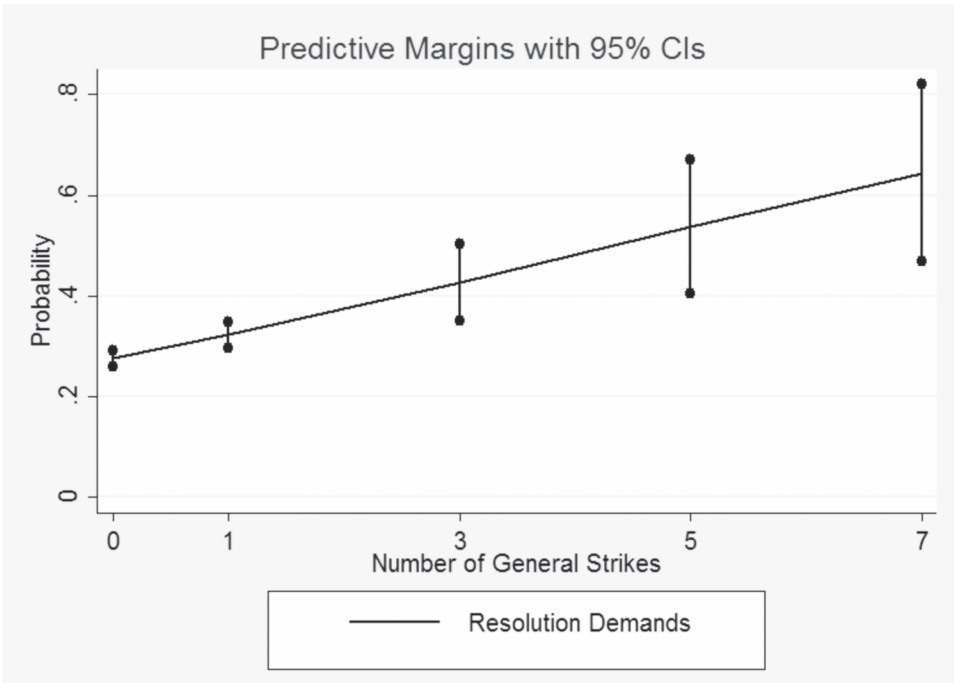


Figure 1.

In support of Hypothesis 2, the initiation of MID is found to be strongly influenced by two of the three measures of severe domestic unrest –purges and riots, both of which are statistically significant and positively correlated with force, while government crises is insignificant. As predicted, five purges in any given year increase the initiation of MID to 54 percent more likely compared to when no purges take place, shown in Figure 2. When using Jung's (2014) measure of domestic unrest as a robustness check,⁸⁴ the natural log of the sum of government crises and purges together, the results are similar. Using this measure, severe domestic unrest is positively related to the likelihood of MID, and substantively influential. Moving from the logged minimum of .7 to the logged maximum of 2.7 government crises and purges increases the likelihood of MID by 78 percent. As a further robustness check,

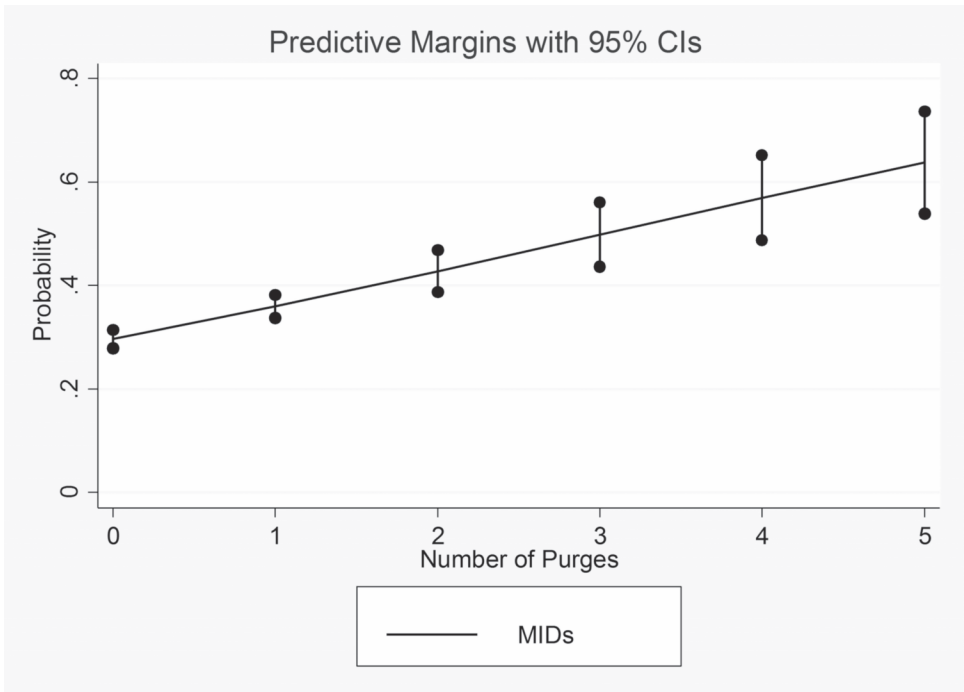


Figure 2.

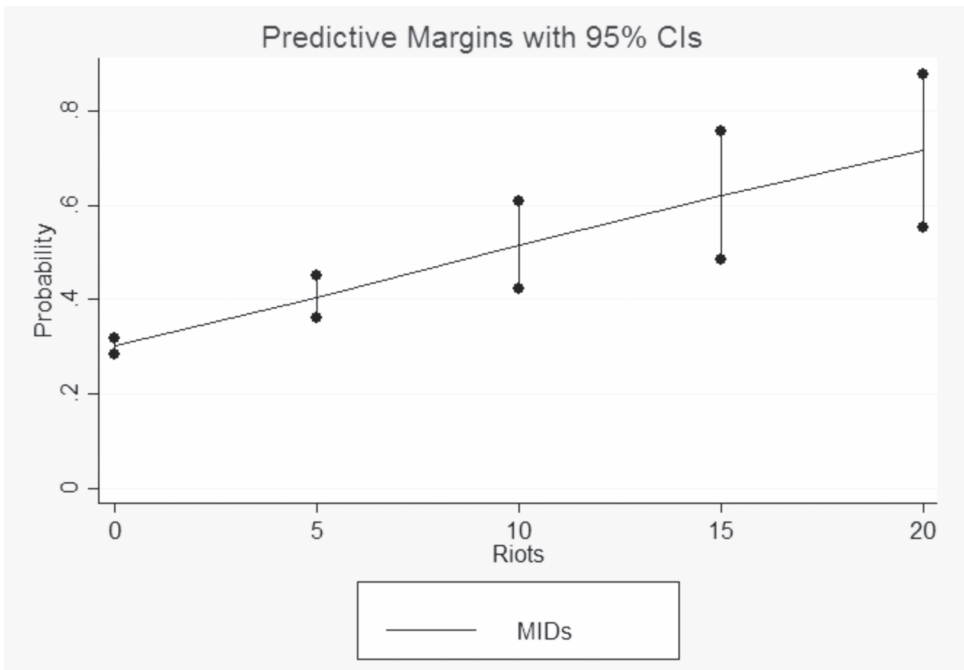


Figure 3.

I use Pickering and Kisangani's (2005) elite unrest variable (government crises and purges summed and squared)⁸⁵ and find a positive correlation with this index and MIDs. With these results, there is strong support for Hypothesis 2 using government crises and purges.

Using riots as a measure of severe domestic unrest also has a positive influence on the likelihood of MIDs. Compared to when there are no riots, the difference between 0 and 20 riots per year leads to a 58 percent increased probability of MIDs.⁸⁶ Even when there are only 5 riots per year, MIDs are more probable by 26 percent. The results from this model are consistent with evidence by Ghosn & Rhamey (2011), who show that riots increase the likelihood of escalation of strategic rivalries.⁸⁷ These findings are not surprising since riots involve violence and are therefore escalated to a higher scale of anti-government sentiment. Riots along with purges lack any statistical effect on the likelihood of resolution demands.⁸⁸ These combined findings indicate that we should expect to see initiation of MIDs as diversionary behavior when leaders are experiencing severe domestic unrest, but such unrest will not have any effect on the probability of resolution demands when it is measured by purges and riots. On the other hand, there is a statistically significant and negative relationship between government crises and resolution demands, indicating that this measure of severe domestic unrest is less likely to lead to resolution demands, consistent with Hypothesis 1.

Turning to the effects of control variables, GDP growth rates as a measure of economic vulnerability is statistically insignificant with both demands for resolution and initiation of MIDs. In other words, economic problems using low GDP growth rates have no apparent influence on these strategies. Consistent with previous research on diversionary force, political vulnerability factors are positively correlated with MIDs, but there is no consensus about the link of economic despair and diversionary behavior.

The coefficient for value of territory is statistically significant and negative for MIDs, indicating that valuable territory influences dispute strategies, in the expected direction of previous research.⁸⁹ As expected, the net democracy score of the challenger state is statistically significant and negatively correlated with MIDs. On the other hand, the challenger's net democracy score is statistically significant and positively related to resolution demands, also as expected. These results are very consistent with previous literature that suggests that leaders of democratic states involved in territorial disputes would be less likely to pursue MIDs as a conflict management strategy, and generally more likely to pursue peaceful means of dispute resolution. The results are also compatible with Pickering and Kisangani's (2005, 2010) results about mass unrest being affiliated with democracies and elite unrest being affiliated with authoritarian regimes.⁹⁰

As expected, based on many previous findings about military capabilities, power ratio is statistically significant and negatively correlated with MIDs. Therefore, the higher the power asymmetry, the less likely MIDs will occur. Clearly and not surprisingly, relative power capabilities have a strong influence on the likelihood of force, which is consistent with most of the research on military power balance. Also

consistent with past research on the effect of challenger and target states being involved in past conflict, the number of MIDs the dyad experienced in past years is strongly and positively related to the probability of both demands for resolution and MIDs. Similarly, as expected, the number of peace years since the last armed conflict is also statistically significant and negatively correlated with MIDs. These findings support previous research about how repeated conflict is more likely the closer the time is to the most recent conflict. The number of peace years is statistically insignificant for demands for resolution.

Conclusions

When leaders experience domestic vulnerability, foreign policy strategies that divert attention from domestic problems are attractive, so the study of diversion has interested scholars and policy makers for some time. Several questions about diversionary theory still exist, particularly the domestic conditions that lead to diversions and what constitutes diversionary behavior. This study has attempted to tackle both of these aspects of diversionary theory by answering two questions. First, does the level of domestic unrest influence diversionary behavior, and second, when diverting, are leaders more likely to pursue MIDs or another foreign policy strategy like demands for dispute resolution, or both?

Though diversionary theory has traditionally attempted to explain uses of force, including those in territorial disputes, the theory can also explain demands for peaceful resolution in territorial disputes. By removing a common assumption that diversionary behavior must involve use of force, the theory and findings suggest that foreign policy substitutability occurs when leaders pursue resolution demands in lieu of pursuing MIDs, depending on the particular conditions of domestic unrest. By accepting the logic of diversionary theory, but removing the assumption of only using force to attempt diversion, this study has concluded that domestically vulnerable leaders also can be likely to pursue resolution demands with experiencing moderate domestic unrest, and MIDs under conditions of severe domestic unrest. The findings also show that there is a negative relationship or no relationship between demands for resolution and severe domestic unrest, depending on the variable tested, nor is there any statistically significant relationship between moderate domestic unrest and MIDs.

There are three implications of this study. First, the findings provide further support for the notion of foreign policy substitutability, such that leaders have different options in foreign policy strategies in response to similar stimuli, in this case, domestic unrest. This means that force is not the only means used to divert domestic attention and though diversionary force theory is supported here, it is not the only strategy of diversion available to leaders. If leaders are more likely to pursue resolution demands under certain conditions, the implication is that the assumption of force as the only strategy in diversionary theory has been incorrect. The findings may also partly explain the difficulty that previous research has had in their attempts to find support for diversionary force.

Another implication is that the measure used for domestic unrest matters. Since the results of the models differ depending on which levels of domestic unrest are used in the models, and how they are operationalized, it is clear that specification is important. The varied outcomes in the primary model and robustness check models confirm that domestic unrest is multifaceted, particularly in regard to the selection of MID initiation as a conflict management strategy. The varied results in this study confirm that the discussion about which indicators of domestic vulnerability best influence diversionary behavior is still up for debate.

Last, domestic unrest should be considered as a key factor in understanding the variation in conflict management strategies. In addition to the well accepted findings about value or salience of territory and past history of MIDs, the results about domestic problems influencing territorial dispute strategies confirms previous research that domestic factors do indeed play an influential role in conflict management of these types of disputes. Recent research on territorial disputes has been more open to the idea that domestic factors like regime type, legal systems, and domestic accountability are influential on strategies of conflict management. This study has attempted to contribute to this genre of literature by providing a more carefully specified theory and models about domestic unrest and demonstrating that domestic vulnerability of leaders impacts conflict management strategies.

Notes

1. I use the term “demand” for peaceful resolution attempts because when leaders of challenger states request that target states agree to a peaceful resolution method, they generally do so using rhetoric that comes across as a demand, not a friendly request. Leaders or government spokespersons typically issue such demands through public statements, news interviews, and speeches reported in the national press.

2. A territorial claim occurs when a government issues an official claim for sovereign rights to territory either claimed by another government, occupied already, or controlled by another state. The challenger state is the state that makes the territorial claim and remains as the challenger state throughout the years or decades of the dispute. The theory focuses on the domestic status of the challenger state specifically because it is the state that seeks a change in the status quo and is therefore generally more proactive in the territorial dispute, unlike the target state, which tends to prefer maintaining the status quo and control of the territory.

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73. Haynes (2017) uses a sum of riots, general strikes, and anti-government demonstrations as a measure of domestic unrest. Pickering and Kisangani (2005) use an index of general strikes, riots, and anti-government demonstrations for mass unrest and index of government crises and purges as a measure of elite unrest. Because I categorize riots as severe unrest, I do not use either of these indexes in the main model since they include riots as mass unrest or the equivalent of moderate unrest. Robustness checks using Pickering and Kisangani (2005)'s measures of mass unrest and elite unrest show that government crises and purges are positively correlated with MIDs in territorial disputes, while using Haynes (2017) measure of anti-government demonstrations, riots, and general strikes in a robustness check shows that purges are positively correlated with MIDs.

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Biographical Note

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Continuity and Change: Ma Ying-Jeou, Tsai Ing-Wen and the Dispute in the South China Sea

Dennis V. Hickey

Structured Abstract

Article Type: Research Paper

Purpose—The South China Sea is one of the most disputed areas of sea in the world. This study compares and contrasts the approaches and strategies adopted by the Republic of China (Taiwan) during the administrations of President Ma Ying-jeou and President Tsai Ing-wen toward the regional quarrel.

Design, Methodology, Approach—The study employs primary source data (including interviews with former President Ma Ying-jeou, arguably the region's foremost expert on Taiwan's claims to the South China Sea), government documents, media accounts and scholarly publications. The paper analyzes and compares the approaches of the new independence-leaning Democratic Progressive Party administration in Taiwan with the previous eight-year rule of the China-friendly Kuomintang (or Chinese Nationalist Party).

Findings—The study provides evidence showing that, despite the unprecedented defeat of the Kuomintang in Taiwan's 2016 elections, thus far changes in government policy toward the South China Sea dispute appear marginal. This is because a conjunction of factors—both internal and external—has prompted the new administration to make only incremental adjustments to President Ma Ying-jeou's policies.

Practical Implications—Since 1955, Taiwan, one of the world's most isolated

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states, has occupied the most valuable piece of real estate in the entire South China Sea—Taiping Island. Any dramatic shift in Taiwan’s policy toward the region could prove catastrophic and undermine peace and stability in the Western Pacific. It is for this reason that other actors—including the U.S. and China—should encourage Taipei to continue to pursue a moderate policy toward the South China Sea dispute.

Originality, Value—This is the first study to compare and contrast the policies adopted by the Republic of China on Taiwan during the administrations of President Ma Ying-jeou and President Tsai Ing-wen toward the dispute in the South China Sea.

Key Words: China, Ma Ying-jeou, South China Sea,
Taiwan, Tsai Ing-wen

Introduction

The Republic of China (ROC or Taiwan) is one of the most marginalized entities in the global community. However, it finds itself in the middle of a complicated quarrel in the Western Pacific—the ongoing dispute in the South China Sea. This study compares and contrasts the policies and strategies adopted by the administrations of President Ma Ying-jeou and President Tsai Ing-wen toward this territorial squabble. The paper suggests that, despite the unprecedented defeat of the Kuomintang (KMT) in Taiwan’s 2016 elections, thus far changes in Taipei’s policy appear to have been marginal. This inertia may be traced primarily to pressures Taiwan confronts in the global system. In other words, the island’s domestic political equation may have changed dramatically, but Taiwan’s policy options toward the South China Sea remain severely constrained by external pressures.

The South China Sea Dispute

The South China Sea is one of the most disputed areas of sea in the world.¹ The People’s Republic of China (PRC or China), Taiwan, Vietnam, Malaysia, Brunei, Indonesia, and the Philippines all lay claim to portions of the South China Sea. With the exception of Brunei, each has sought to bolster claims by establishing military outposts in the region.

According to the United Nations Convention on the Law of the Sea (UNCLOS)—an international pact to which all claimants (except Taiwan) are party—the territorial features of a claim may have a critical impact on the size of an “exclusive economic zone (EEZ)” and the accompanying rights to exploit natural resources.² For example, according to the UNCLOS, ownership of an actual island may entitle a claimant to a 200-mile EEZ in all directions. But ownership of a rock or shoal only entitles it to 12 miles of territorial waters.

With respect to the South China Sea, a key difficulty is that a lot of data on islands, islets, rocks and shoals is unavailable or incomplete.³ Given the stakes

involved, some governments—most notably China and Vietnam—have built “extensive structures atop small rocks, or based troops on islets with no fresh water—actions intended to demonstrate control, and some argue even habitability.”⁴ But UNCLOS does not recognize these “artificial islands” as territory. According to Article 60, “artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.” Finally, the situation is muddied by some countries that refuse to state plainly what they claim to own.

Along with the PRC, Taiwan’s claims to the South China Sea are considered by most to be most expansive (each claims roughly 90% of the region). The discussion below outlines the evolution of Taipei’s policy toward the South China Sea.

Taiwan and the South China Sea: 1945–2000

The ROC first publicized its claims in the South China Sea following the defeat of Japan in World War II. In 1946, naval ships were dispatched to the area and “Marines landed, raised the national flags and erected markers on these islands.”⁵ In December 1947, the Nanjing government published the “Southern China Seas Islands Location Map” outlining China’s territorial claims with an eleven-dash line (the PRC adopted the map in 1949, but removed two dashes bordering Vietnam in 1953).

After losing the Chinese mainland to the forces of Chairman Mao Zedong in 1949, the ROC retreated to Taiwan where it continued to press its maritime claims. In addition to historical claims dating back over a thousand years, Taipei has long insisted that it “acquired sovereignty over the South China Sea islands by signing the Treaty of Peace with Japan in 1952.”⁶ In that document, the ROC argues that Japan renounced claims to territories taken from China in the 1895 Treaty of Shimonoseki and restored them to China. As one study noted, however, the ROC government made its claims to the South China Sea “without specifying whether the area fell within its territorial waters, or as maritime spaces that brought along economic interests to the island.”⁷

Following the “liberation” of the Hainan Island by the People’s Liberation Army (PLA) in 1950, President Chiang Kai-shek ordered his troops in the South China Sea to withdraw and retreat to Taiwan.⁸ Several years later he ordered them back. Since 1955, ROC forces have occupied Taiping Island (Itu Aba), which is located roughly 1,000 miles southwest of Taiwan and is the only island in the Spratly archipelago with its own fresh water supply. Taiwan also controls the Dongsha (Pratas), which is the largest island cluster in the South China Sea and is located roughly 260 miles southwest of Taiwan. Taipei occupies the only surfaced atoll to be found in the Pratas.

Taiwan was the first state to “militarize” its possessions in the South China Sea

after World War II. At its height, Taipei stationed roughly 500 marines on its islands (these troops were replaced with coast guard personnel in 2000). Generally speaking, however, “Taiwan’s policy toward the South China Sea from the 1970s to the 1990s was one that could be characterized as self-restrained and moderate.”⁹ As other claimants moved gradually into the Spratly region and occupied contested territories, Taiwan did little more than complain and protest—a practice that continues to this day. Indeed, Taipei has carefully chronicled and recorded every instance involving the occupation of its territorial claims.¹⁰

In 1990, Lee Teng-hui, then Taiwan’s president, visited the Dongsha Islands. Toward the end of his term in office, Taipei adopted “the Law on the Territorial Sea and the Contiguous Zone of the ROC” and “Law on the Exclusive Economic Zone and the Continental Shelf of the ROC.” This legislation meant that Taiwan—like all other claimants—had “pursuant to UNCLOS ... claimed a territorial sea, an EEZ, and continental shelf from their archipelagic baselines or along their mainland coasts.”¹¹ It was also during Lee’s administration that Taiwan’s Marine Corps troops deployed on the Spratly Islands and Pratas Islands were replaced with Coast Guard personnel. Taipei explained that the change was intended to reduce regional tensions, but others speculated that it was a cost savings measure. Irrespective of motives, no other states reciprocated.

After his election as Taiwan’s president in 2000, Chen Shui-bian adopted a puzzling policy. On the one hand, he scrapped the “Policy Guidelines for the South China Sea,” a document drafted in 1993 that had boldly cited Taipei’s expansive “historic waters” claim to the sea areas. To some, Chen’s action appeared to signal a lack of interest in the region. Mainland Chinese officials feared that it represented a first-step to abandoning all claims to the South China Sea and was part of Chen’s scheme to achieve Taiwan’s *de jure* independence from China. On the other hand, Chen transferred the responsibility for dealing with the South China Sea from the Ministry of Interior to the National Security Council, and he was the first Taiwan leader to visit Taiping Island. It is also significant Chen oversaw the construction of a large runway on Taiping Island (a military C-130 cargo aircraft was the first plane to use the airfield in 2007).

Ma Ying-Jeou and the South China Sea

Following his election as ROC president in 2008, Ma Ying-jeou outlined several principles to guide Taiwan’s policy toward the South China Sea.¹² These included: (1) safeguarding national sovereignty; (2) shelving disputes; (3) peace and reciprocity; and (4) joint development.¹³ In order to meet these objectives, Taipei adopted a set of policy guidelines for the region: (1) seeking joint development of resources; (2) helping maintain regional peace and stability; (3) promoting research on resources in the South China Sea; and (4) working with international conservation groups to establish a peace park on Taiping Island.¹⁴

With respect to the sovereignty issue, Ma Ying-jeou declared that the vast

majority of land features and waters in the South China Sea region belong to Taipei. As Ma explained:

The ROC government has long maintained that from the perspectives of history, geography and international law, the Nansha (Spratly), Shisa (Paracel), Chungsha (Macclesfield Bank), and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters. The ROC thus enjoys all rights over them in accordance with international law.¹⁵

At the same time, however, Ma was quick to acknowledge the fact that regional tensions had risen and “with neighboring countries occupying difference islands, sovereignty has become a complex issue.”¹⁶

During his eight years in office, President Ma focused a lot of his attention on maritime issues. Much of his time was spent on the territorial quarrel with Japan in the East China Sea.¹⁷ But there was also a discernable up-tick in activities directed toward the South China Sea. Ma eventually embraced similar strategies toward both of these challenges.

On the one hand, Taiwan pushed a pragmatic diplomatic resolution to the quarrels in the South China Sea. Although Taipei declared that it would never give up its “indisputable” sovereignty over most of the area, it also suggested that disputes should be put aside and resources (fish, oil, gas, etc.) shared. This was identical to the stance that Ma advanced with his East China Sea Peace Initiative.

During discussions with the author on the sidelines of the *2013 East China Sea Peace Forum* in Taipei, President Ma conceded that it might prove “difficult” to apply the East China Sea Peace Initiative to the South China Sea because there are “so many countries involved in that dispute.”¹⁸ By 2014, however, he had changed his mind. In May 2014, Ma proclaimed that Taiwan could “play a regional role as peacemaker” and that the spirit of his “East China Sea Peace Initiative” could apply to the South China Sea.¹⁹ Several months later, he explained that Taipei’s diplomatic approach toward its quarrel with Tokyo over the Diaoyutai (Senkaku) islands was welcomed by the global community and that “the same approach can be applied in resolving disagreements in the South China Sea to create a winning situation for all parties.”²⁰

On May 26, 2015, President Ma formally rolled out his “South China Sea Peace Initiative (SCSPI).” He explained that “we emphasize that, while sovereignty cannot be divided, resources can be shared, thereby replacing sovereignty disputes with resource sharing.”²¹ The president stressed that all parties in the dispute should be included in mechanisms designed to promote peace, develop resources, protect the environment and provide humanitarian assistance and disaster relief. Ma’s initiative called on all disputants to adhere to five provisions:

- Exercise restraint, safeguard peace and stability in the South China Sea, and refrain from taking any unilateral action that might escalate tensions;
- Respect the principles and spirit of relevant international law, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea, peacefully deal with and settle disputes through dialogue and consultations,

and jointly uphold the freedom and safety of navigation and over-flight through the South China Sea;

- Ensure that all parties concerned are included in mechanisms or measures that enhance peace and prosperity in the South China Sea, e.g. a maritime cooperation mechanism or code of conduct;
- Shelve sovereignty disputes and establish a regional cooperation mechanism for the zonal development of resources in the South China Sea under integrated planning; and
- Set up coordination and cooperation mechanisms for such non-traditional security issues as environmental protection, scientific research, maritime crime fighting, and humanitarian assistance and disaster relief.²²

Despite pushing the SCSPI, however, it is noteworthy that Ma always emphasized that Chinese “sovereignty over these islands is firmly rooted from the perspective of history, geography, geology and international law, and can be sustained with historical documents such as the resolutions of international meetings.”²³ This position was also articulated in official documents of the Ministry of Interior and Ministry of Foreign Affairs (MOFA).²⁴

In addition to promoting a peaceful resolution to the ongoing dispute, Ma ordered relevant agencies to map out all land features in the South China Sea. This “painful demarcation” of territory did not represent an abandonment of the historic eleven-dash line.²⁵ Rather, the president and others emphasized that Taipei claims sovereignty over all of the islands, rocks, shoals and reefs within the nine-dash line. That meant that Taiwan is entitled to territorial waters surrounding these land features as per relevant UNCLOS guidelines.

The “soft” or diplomatic approach to the problems in the South China Sea represented only one part, albeit an important part, of policy during the Ma administration. Taipei also appeared to embrace a somewhat “hard” approach. While appearing to extend an olive branch to all disputants, Taiwan simultaneously bolstered its defenses. For starters, Taiwan made improvements to the 3,940-foot-long runway on Taiping Island and constructed a port capable of handling 3,000-ton warships. Authorities acknowledged that the U.S. \$110 million naval facility could serve as a permanent base for armed vessels.²⁶ Heavy mortars and 40 mm anti-aircraft guns were also placed on both Taiping and Dongsha Island.

In 2014, ROC Marines returned to Taiping Island via six warships for a large-scale amphibious assault field drill. The live-fire maneuvers were described as Taiwan’s “largest military exercises in the South China Sea in recent years.”²⁷

In April 2015, the ROC military confirmed that it was dispatching P-3 Orion maritime patrol craft to conduct surveillance missions in the region. Furthermore, it drew up a contingency plan for conflict in the area named “Operation Wei-Chiang.” That same year, Taiwan completed the Taiping Island Transportation Infrastructure Project that included the renovation of the island’s wharf and lighthouse.²⁸

Finally, it is noteworthy that the number of visits by delegations of politicians, educators, students and others increased markedly during the Ma administration.

The most significant visit came in 2016 when the president visited Taiping Island. Ma had planned to journey to the South China Sea in November 2015, but canceled the trip after the U.S. voiced concerns about it. In January 2016, Ma traveled to Taiping Island despite what some scholars describe as “unusually harsh” criticism from Washington.²⁹ During an interview with the author, however, Ma explained that some U.S. authorities stationed at the American Institute in Taiwan (AIT) had simply misunderstood the purpose of the visit—it was intended as a journey of peace to promote a sensible and negotiated resolution to the ongoing maritime dispute. Ma said that the AIT voiced concerns that his journey would set a precedent and was “afraid other heads of state will visit their claims.”³⁰

As the Ma era drew to a close in early 2016, it ramped up efforts to influence an upcoming ruling by the Permanent Court of Arbitration in The Hague in a case brought by the Philippines against the Chinese mainland’s claims in the South China Sea. Due to its unique status in the international community, Taiwan’s representatives were locked out of the legal proceedings (they were not even allowed to attend as “observers”).³¹ Nevertheless, Taiwan extended an invitation to representatives from the Philippines and the five arbitrators on the court to visit Taiping Island to determine whether it was an island or a rock.³² The invitation was rejected. In an unusual move, however, the tribunal permitted a private Taiwan based group (with links to the ROC government) to submit several hundred pages of evidence in April 2016. An *Amicus Curiae* brief submitted by the Chinese (Taiwan) Society of International Law concluded that “it is clear that Taiping Island is an island which can sustain human habitation and economic life on its own under Article 121(1) and (3) of the UNCLOS.”³³ It is not known why the tribunal permitted the submission—there is speculation that Beijing played a role. Responding to the media queries, China’s Ministry of Foreign Affairs (MOFA) replied only that, “Chinese people on both sides of the Taiwan Strait all have a responsibility to jointly protect the ancestral property of the Chinese people.”³⁴

Tsai Ing-Wen and the South China Sea

On January 16, 2016, Taiwan’s voters went to the polls to elect a new president and legislature. After counting the votes, it was clear that the independence-leaning Democratic Progressive Party (DPP) had won a convincing victory. The fact that the island’s voters had elected their first female president was big news. But Tsai’s election was overshadowed by the DPP’s victory in legislature, where it handed the KMT its first legislative defeat since moving to Taiwan in 1949.

During the campaign, Tsai hammered away at Ma’s uneven economic record and made sweeping promises to increase social welfare and defense spending, protect the environment, diversify trade, and somehow find new momentum for Taiwan’s economic development. With respect to cross-strait relations, Tsai refused to endorse the 1992 Consensus. This understanding—an arrangement whereby Beijing and Taipei agree that there is one China, but differ on what that means—had reduced

cross-strait tensions to their lowest level since the country was split by civil war in 1949.

Rather than state plainly her position toward relations with the mainland, Tsai preferred to avoid the issue. Whenever asked to clearly explain her policy, she claimed to support the “status quo” and pledged to conduct relations with Beijing in accordance with “the will of the Taiwan people” and the constitution. This led Ma Ying-jeou to criticize Tsai’s position as little more than “slogans,” while Eric Chu, KMT chairman, described it as “gobbledygook to take people in.”³⁵ At the opposite end of Taiwan’s political spectrum, Koo Kwang-ming, a leading independence activist and founder of the think tank, *Taiwan Brain-Trust*, opined that the DPP embraced the “status quo” because it was unable to come up with a better policy and “it is the policy that would bring the least trouble.”³⁶ He blasted the DPP position as “meaningless.”³⁷ Mainland scholars appeared to agree and complained that Tsai was engaging in “rhetoric and wordplay” throughout Taiwan’s election cycle.³⁸

Given Tsai’s opaque position toward relations with Beijing, it comes as little surprise that she appeared to embrace a vague approach toward some other “sensitive” issues—including Taiwan’s maritime disputes. This led the KMT to warn voters that Tsai would “surrender” Taiwan’s claims in the South China Sea. Tsai responded that she could not understand why anyone would suggest that her party would abandon Taiping Island if it was returned to power.³⁹ The DPP charged that the party “had never advocated giving up the South China Sea territory.”⁴⁰ DPP heavyweights even went so far as to threaten the KMT with a lawsuit if they continued the “smear tactics.”⁴¹

During her campaign, Tsai seemed to embrace a moderate, albeit vague, position toward the South China Sea dispute. The candidate and other DPP heavyweights argued that Taiwan’s maritime claims are supported by international law. For example, Tsai declared that “all parties should put forth their proposals and state their stances based on the legal principles of the UNCLOS.”⁴² Like her calls to support the “status quo” in cross-strait relations, however, Tsai’s position toward the South China Sea lacked policy specifics.

After assuming office on May 20, 2016, President Tsai did not pay much attention to the South China Sea. Perhaps this was because she had to cope with a series of missteps and near-catastrophes ranging from her administration’s mishandling of an accidental launch of a supersonic missile toward the Chinese mainland to a flood at the island’s chief international airport. Given such considerations, it should come as little surprise that media outlets reported that Taipei appeared to be “caught off-guard” by the ruling of the Permanent Court of Arbitration in The Hague on July 12, 2016.⁴³ The international tribunal broadly rejected China’s historic claims to the region and ruled that Taiping Island (along with other features in the Spratly archipelago) was only a rock. The decision effectively limited Taiwan’s claim to only 12 nautical miles of territorial sea surrounding Taiping Island.

The tribunal’s ruling elicited an immediate response from Taipei. Tsai’s office declared that “we absolutely will not accept [the tribunal’s decision] and we maintain that the ruling is not legally binding.”⁴⁴ Some of her appointees called the verdict

“completely unacceptable” and blasted its description as the “Taiwan authority of China” as “inappropriate” and “demeaning.”⁴⁵ They also argued that the tribunal had overstepped its authority, as the Philippines had not requested that judges determine the status of all territories in the Spratlys. Interestingly, a high ranking official representing Taiwan’s Mainland Affairs Council (MAC) cited the expansive historical claims to the South China Sea when he asserted that Taipei “enjoys the rights to various South China Sea islands and relevant waters in line with international law and the UNCLOS and *the locations of those South China Sea islands are based on the map [the ROC] had drawn in 1947 [emphasis added].*”⁴⁶ As described, this same map—the Southern China Seas Islands Location Map—had introduced the world to the controversial eleven-dash line (later reduced to nine dashes by the PRC) in 1947.

With respect to concrete actions, President Tsai immediately ordered a warship to the South China Sea and addressed the crew before its departure. Tsai proclaimed that the deployment was “highly significant” and declared that the arbitration ruling had “seriously hurt our rights to the South China Sea islands and their relevant waters. This naval mission is to demonstrate the resolution of Taiwan people in defending our national interests.”⁴⁷

On July 19, 2016, President Tsai called her first formal meeting of her National Security Council (NSC) to discuss developments in the South China Sea. Arguing that the award rendered in the South China Sea ruling was “totally unacceptable” and had “no legal binding” on Taiwan, Tsai announced that Taipei would take five actions as follows:

- Step up patrol missions to safeguard the rights and safety of Taiwan fishermen operating in the South China Sea;
- Enhance multilateral dialogue with other relevant parties on collaboration and consensus;
- Direct the “Ministry of Science and Technology” and related agencies to invite international scholars to Taiping Island to conduct scientific research on climate change, earthquakes, geology and meteorology;
- Collaborate with international organizations and develop Taiping Island into a base for providing humanitarian aid and supplies, and
- Encourage more local talent to study maritime law so as to strengthen the nation’s preparedness in response to international legal issues.⁴⁸

Due to the legal and political problems associated with overlapping claims, Tsai also outlined four principles that would guide policies toward disputes in the contested region:

- All disputes should be resolved peacefully in accordance with international law and UNCLOS;
- Taiwan must be included in any multilateral dispute settlement mechanisms;
- Other relevant parties are obligated to ensure freedom of aviation and navigation in the South China Sea, and

- Taipei calls for other relevant parties to set aside differences and resolve disputes through joint development and remain committed to promoting regional stability and protecting maritime resources.

Over a year has passed since President Tsai outlined her policy toward the South China Sea dispute. Since that time, several actions stand out as noteworthy.

In August 2016, Yeh Jiunn-rong, Minister of the Interior, and Lee Chung-Wei, Director General of the Coast Guard Administration, journeyed to Taiping Island along with a group of Kaohsiung city officials, experts on climate change and researchers from the Ministry of Science and Technology. In keeping with policy as outlined above, Taiwan claimed that the mission was intended to boost momentum for scientific research. As Alex Huang, Tsai's spokesman, explained, Yeh's trip was "part of the plans that Tsai announced during a recent high-level national security meeting to boost momentum for scientific research on the island and promote global cooperation on ecological research and climate change."⁴⁹ When pressed, Huang would not rule out a future visit by Tsai. Moreover, when a Tsai appointee was asked by reporters whether the U.S. had approved Yeh's visit, he replied, "is it necessary for the minister to notify our ally of such a visit? I do not think so."⁵⁰

In November 2016, Taipei conducted its first-ever cross-agency humanitarian rescue drill in waters near Taiping Island. Code-named "Nanyuan Number One," the exercises involved Taiwan's Coast Guard, Navy and Air Force. The exercise squared with the new president's call to turn Taiping Island into an international rescue center. During a post-drill press conference, authorities bristled when questioned whether they had intentionally timed the exercises to coincide with drills being conducted by the Chinese mainland. Hsu Kuo-yung, a Tsai spokesman, denied the accusation claiming, "we conduct our own drills."⁵¹

In December 2016, the opening of a special exhibit marking the 70th anniversary of the "recovery" of territories in the South China Sea provided Tsai with an opportunity to reiterate "sovereignty over the South China Sea Islands and all rights over their relevant waters."⁵² The president announced that "I once again reiterate that the government will staunchly safeguard our country's territorial sovereignty in the South China Sea, and insists upon all legal rights over the relevant waters in accordance with international law and the law of the sea."⁵³ At the same time, however, Tsai acknowledged that several nations have overlapping claims in the region and pledged that Taiwan "will continue to cooperate and negotiate with these nations." The president also used the occasion to repeat the "four principles" she claims now guide policy toward the South China Sea.

In March 2017, Taipei responded to reports that China and the ten-member Association of Southeast Asian Nations (ASEAN) were moving slowly toward the completion of a code of conduct to ease tensions in the South China Sea. Authorities announced that no guidelines would be binding on Taiwan unless it was included in negotiations. Officials were especially miffed by Manila's claim that Taipei was represented by Beijing as all ASEAN nations adhere to the "one China" policy.⁵⁴ True to form, after China and ASEAN members announced that they had adopted

a framework for a code of conduct on August 6, 2017, Taiwan's foreign ministry declared "the island groups and their surrounding waters in the South China Sea are an inherent part of ROC territory and the nation's rights are unquestionable under international law and the law of the sea."⁵⁵ Taipei also repeated the call to be included in any international negotiations.

Finally, in April 2017, media outlets reported that Taipei was moving ahead with plans to beef up military defenses on Taiping Island. In September 2016, ROC defense authorities confirmed that they had requested that Google blur satellite images of "important military facilities."⁵⁶ Analysts suspected the images showed the construction of new military installations, including anti-aircraft gun blockhouse towers. Military leaders are now requesting reinforcements. According to media accounts, the Tsai team is reviewing plans to deploy a remote-controlled multiple rocket launcher with anti-landing capabilities and a short-range automated defense XTR-102 weapons system that includes two T-75 20mm automatic guns.⁵⁷ Both weapons were developed indigenously by Taiwan's Chungshan Institute of Science and Technology. Responding to press reports, a defense spokesman said only that the military possesses a "well rounded and comprehensive plan" to protect its territory.⁵⁸ In July 2017, Taiwan media reported that the Ministry of National Defense suggests that Taiping Island's military muscle "should be bolstered with drones, mobile radar systems, an integrated surveillance and defense system, multiple-launch rocket artillery turrets and double-barrel 20mm guns."⁵⁹

Analysis

Changes in policies—ranging from health care to foreign affairs—may be classified into four categories that differ according to the degree and speed of change.⁶⁰ Large scale and fast paced change can be described as "big bang" shifts in policy. Large scale and slow-paced change may be described as "blueprint" transformations, while multiple small-scale changes occurring simultaneously can be classified as "mosaic" changes. Finally, small-scale and slow-paced changes may be labeled as "incremental" adjustments in policy. Others might describe such slight modifications as "evolutionary."

As described, under President Ma's leadership Taiwan directed a lot of attention to regional maritime disputes. With respect to the South China Sea issue, following Ma's election in 2008, "a revival of governmental attention and policy interests took place."⁶¹ The key components of the Ma's approach to the South China Sea quarrel may be summarized as follows:

- Calling for all parties to share resources and protect the environment;
- Promoting scientific research that will help protect the environment;
- Using Taiping Island as a base to provide humanitarian and disaster relief;
- Calling for all parties to "respect the principles and spirit of relevant law, including the Charter of the UN and the UNCLOS";

- Citing historical records and the 1947 Southern China Seas Islands Location Map to bolster Taiwan’s claims in the region;
- Arguing that Taipei is not bound to follow any international agreements in the region unless it is included in multilateral negotiations;
- Mapping out islands, islets and territories in the South China Sea to make Taiwan’s claims to waters and territories consistent with UNCLOS guidelines;
- Sending academic and government delegations to the South China Sea, and
- Boosting defenses in the South China Sea

A cursory review of these points reveals that the Tsai leadership cohort has made only incremental changes to Ma’s policies in the South China Sea. In other words, there has been no “big bang” shift in policy. In fact, there is almost no change to the policy positions listed above.

Tsai’s policy looks a lot like the policy crafted by her archrival, Ma Ying-jeou.⁶² But there are subtle changes in policy. When asked during an interview with the author to outline differences between the two administrations, President Ma identified three modifications in policy:

They support [the Taiwan] claims to Taiping Island, but that’s all. They seldom mention the maritime zones in the South China Sea—that’s one thing. The other is that they never mention the eleven-dash line. And they sometimes shy away from the historical record of the South China Sea.⁶³

However, it should be emphasized that Tsai has not formally declared that Taiwan has abandoned any claims to the South China Sea or relevant maritime zones. And Taipei has not formally abandoned the eleven-dash line. Rather, it prefers to sidestep specifics by not mentioning them. In this respect, Tsai’s position is similar to her administration’s elusive approach to relations with the Chinese mainland. The administration still claims that it must “safeguard” its “territorial sovereignty in the South China Sea” and maintain “legal rights over the relevant waters,” but it never explains what this means. In other words, the administration is intentionally vague and ambiguous. During an interview with the author in Taipei in March 20017, a seasoned ROC diplomat confirmed that this was the case. When asked to describe Tsai administration policy, he quipped, “don’t ask, don’t tell—there are no position papers, pamphlets or other materials for widespread distribution.”⁶⁴ In other words, the Tsai administration appears not to share the Ma administration’s interest in maritime issues. Interestingly, a majority of documents related to the South China Sea and posted on the website of Taiwan’s MOFA were crafted during the Ma administration.

One must search to uncover evidence (or hints) of a change in policy, but it is there. For example, when discussing Taipei’s territorial possessions during the Ma era, the official “ROC (Taiwan) Yearbook” stated that the “islands and surrounding regions in the South China Sea claimed [by Taipei] ... include the Dongsha (Pratas) Islands 東沙群島, the Nansha (Spratly) Islands 南沙群島, the Xisha (Paracel) Islands 西沙群島 as well as the group of reefs and shoals called the Zhongsha Islands 中沙群島 (Macclesfield Bank).⁶⁵ However, in the 2016 yearbook—a docu-

ment crafted in the first year of the Tsai administration—one finds a change. With respect to territories, the book states only that the “islands claimed [by Taipei] ... in the South China Sea include the Dongsha (Pratas) Islands 東沙群島, the Nansha (Spratly) Islands 南沙群島, the Xisha (Paracel) Islands 西沙群島 and the Zhongsha Islands (Macclesfield Bank) 中沙群島.”⁶⁶ It appears the new Tsai team quietly jettisoned any mention of “surrounding regions” or “reefs and shoals.”

In addition to failing to mention some territories claimed during the Ma era, the Tsai administration most often downplays historical claims to the region. Not surprisingly, documents posted on the MOFA website reveal that the Ma administration often mentioned the ROC’s historical rights in the region. For example, shortly before Tsai took office in May 2016, the MOFA declared, “whether from the perspective of history, geography, or international law, the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands, and their surrounding waters, are an inherent part of ROC territory and waters. The ROC enjoys all rights over them in accordance with international law. This is indisputable.”⁶⁷ During the Tsai administration, however, references to historical rights have been largely dropped. For example, some found it ironic that there was no mention of the ROC’s historical claims to the region even when President Tsai delivered an address during an event commemorating the 70th anniversary of the government’s “recovery” of the South China Sea islands.⁶⁸ Rather, she once again emphasized international law.

To be sure, Taipei now prefers to avoid references to 1947 Southern China Seas Islands Location Map (and its eleven-dash line). On occasion, however, the document is trotted out to bolster Taiwan’s claims. And despite the reticence to employ the map when staking out its position, Taipei’s current policy toward the sovereignty dispute is actually not very far from the KMT’s position. During interviews with the author during the Ma era, KMT heavyweights claimed that the dashes in the Southern China Seas Islands Location Map—rather than a full line—were intentional and significant. This is because the dashes signify that Taipei does *not* claim all waters in the region (only land features and surrounding waters). In fact, Ma now believes that elements within the Chinese mainland may be warming to this interpretation of the historical document.⁶⁹

As Tsai explained when kicking off her campaign in 2015, “I am not Ma Ying-jeou.”⁷⁰ Despite overarching similarities, there are always differences in policy when comparing leadership teams. For example, some complained that Tsai’s response to the arbitration ruling in 2016 was too weak and that she should have followed in Ma’s footsteps and traveled to Taiping Island. However, others argued that Tsai was too strong and belligerent and overreacted to the tribunal’s decision. Jerome Cohen, an American specialist in Chinese law, charged that “today’s response openly rejecting the [tribunal] ruling is a big mistake and different from what even Ma would have done.”⁷¹ The DPP criticisms of America’s alleged role in the tribunal also raised some eyebrows.⁷²

When choosing which type of policy change to pursue, a decision-maker normally will be influenced by the internal and external environment s/he confronts at

any given time. This helps explain why Tsai Ing-wen has pursued only incremental and opaque shifts in policy toward the South China Sea dispute.

With respect to domestic constraints, public opinion polls consistently show that most Taiwanese support the claims to territories in the South China Seas. Important constituencies—particularly the local fishing industry—are vocal in their support. This is because livelihood of many fishermen depends upon continued access to these waters. In contrast to the low approval rating of Ma’s economic policies, there is no evidence to support the argument that his approach toward the dispute in the South China Sea was unpopular among the Taiwan people. Indeed, Ma’s handling of external relations generally received high marks. For example, scientific polls (not the unreliable polls employed by Taiwan’s partisan think-tanks or political activists) show that a solid majority of Taiwan’s people supported his approach to relations with the mainland and most still support it.⁷³

With respect to external pressures, Taiwan might best be described as “a shrimp between whales.” This is because major players in world politics (particularly Washington and Beijing) have long conspired to limit Taiwan’s external policy options.⁷⁴ Any dramatic shift or “big bang” in Taiwan’s policy toward the South China Sea dispute could generate a lot of fallout. It is likely that these pressures play the paramount role in shaping Taipei’s policy toward the South China Sea dispute—irrespective of who occupies the presidential palace.

On the one hand, if Taipei leans too close to Beijing, it will antagonize Washington—Taiwan’s only potential security partner and most powerful friend in the global community. The move might also irritate other external actors—particularly the governments in Southeast Asia—and jeopardize one of Tsai’s biggest external policy initiatives (the latest reincarnation of the “Go South” policy).

On the other hand, if Taipei accedes to what some claim are “unofficial” requests by Washington to abandon the eleven-dash line and its claims in the South China Sea, the move might infuriate Beijing.⁷⁵ One western analyst has suggested that, “while China might not go as far as to attack Taiwan if it dropped its claim to the South China Sea, it would nevertheless react hysterically.”⁷⁶ During an interview with the author, Dr. Su Chi, Chairman of Taipei Forum, a prestigious Taiwan think-tank and former ROC National Security adviser, asserted that the eleven-dash line holds “sovereignty implications” and any administration in Taipei that abandons the historic demarcation “will turn the entire 1.3 billion Chinese people against it.”⁷⁷ Chiu Yi, a former Taiwan lawmaker, has gone further. He predicted that such a move would likely ignite a “cross-straits conflict” that would hold “disastrous consequences” for Taiwan.⁷⁸

Conclusions

Like all players in contemporary world politics, Taiwan confronts many complex challenges. Not surprisingly, policy making is often a complicated process as numerous forces from both within and outside the island seek to play a role in shaping

policy. This observation applies with special force to Taiwan's maritime claims in the South China Sea. Taiwan—a small, weak and isolated polity—occupies the most valuable piece of real estate in the region. This places the island in an unenviable spot—squarely in the middle of an international dispute. As Su Chi observed, Taiwan finds itself in the “the eye of the typhoon.”⁷⁹

To be sure, Tsai Ing-wen has only served as ROC president for roughly two years. Things can change. Indeed, some in her party hope for big changes in policy toward the South China Sea.⁸⁰ Thus far, however, a conjunction of factors—both internal and external—have prompted Tsai to make only incremental adjustments to Ma's policy. All calls to fundamentally change policy have proved unsuccessful. As Liu Fu-kuo, an international relations analyst at Taiwan's National Chengchi University observed, “every time it comes to her, she said ‘no change’ ... and this is the policy our government is currently taking.”⁸¹ This is because any “big bang” transformation in policy will yield few, if any dividends. A dramatic shift in policy could destabilize domestic politics and/or jeopardize relations with important external actors (Beijing or Washington). Indeed, a “big bang” could prove catastrophic by igniting a “bigger bang” that undermines peace and stability in the Western Pacific. It is for these reasons that it is likely that Tsai will continue to pursue a moderate, albeit ambiguous, policy toward the South China Sea dispute for the foreseeable future.

Notes

1. Ships passing through the area carry over half of the world's trade—including vital energy resources. The South China Sea is also home to potentially rich oil and gas fields and it is a major source of fish—a crucial food stock for countries located in the region.
2. Taiwan cannot sign UN agreements as it is blocked from membership in the global body.
3. Laura Schwartz, “Competing Claims in the South China Sea: National Bureau of Asian Research Roundtable Report,” National Bureau of Asian Research (NBR), February 9, 2014, <http://www.nbr.org/research/activity.aspx?id=401>.
4. Ben Dolven, Shirley Kan and Mark E. Manyin, *Maritime Territorial Disputes in East Asia: Issues for Congress* (Washington, D.C.: Congressional Research Service, January 30, 2013), p. 7.
5. “America Making a U-Turn Over U-Shaped Lines in Disputed Sea,” *China Post*, October 16, 2014, <http://www.chinapost.com.tw/editorial/taiwan-issues/2014/10/16/419513/p2/America-making.htm>.
6. *Ibid.*
7. Hui-Yi Katherine Tseng, “Taiwan in the South China Sea Disputes: Policies and Prospects,” in *Territorial Disputes in the South China Sea: Navigating Rough Waters*, ed. Jing Huang and Andrew Billo (London: Palgrave MacMillan, 2015), p. 129.
8. Stein Tonnesson, “History of the Dispute,” in *War or Peace in the South China Sea?*, ed. Timo Kivimäki (Copenhagen: NIAS Press, 2002), p. 9.
9. Cheng-yi Lin, “Taiwan's Spratly Initiative in the South China Sea,” *China Brief* 8 (4), February 29, 2008, [http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews\[tt_news\]=4731&no_cache=1#.VGovV2e0r5k](http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews[tt_news]=4731&no_cache=1#.VGovV2e0r5k).
10. Republic of China Ministry of Interior, *Compilation of Historical Archives on the Southern Territories of the Republic of China* (Taipei: ROC Ministry of Interior, 2015), pp. 106–153.
11. Robert C. Beckman, “International Law, UNCLOS and the South China Sea,” in *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources*, ed. Robert C. Beckman, Ian Townsend-Gault, Clive Schofield, Tara Davenport, and Leonardo Bernard (Northampton, MA: Edward Elgar Publishing, 2013), p. 60, <https://doi.org/10.4337/9781781955949>.

12. Discussion of the fundamentals of Ma's policy are also covered in some of the author's earlier publications, including Dennis Hickey, "In the Eye of the Typhoon: Taiwan and the Growing Dispute in the South China Sea," *Asian Perspective*, 40(4) (October–December, 2016), pp. 731–751; and Dennis V. Hickey, "Taiwan and the Rising Tensions in the East China Sea: A Mouse That Roared," *Asian Survey*, 54(3) (May–June, 2014), pp. 492–514.
13. Yann-huei Song, "Recent Developments in the South China Sea: Taiwan's Policy, Response, Challenges and Opportunities," Paper presented at the Center for Strategic and International Studies (CSIS) Conference on Managing Tensions in the South China Sea, Washington, D.C., June 5–6, 2013, p. 6.
14. *Ibid.*
15. *Compilation of Historical Archives on the Southern Territories of the Republic of China*, p. 8.
16. *Ibid.*
17. For an overview of Taiwan's approach to the quarrel in the East China Sea, see Dennis V. Hickey, "Taiwan and the Rising Tensions in the East China Sea: A Mouse That Roared," *Asian Survey* 54(3) (May–June, 2014), pp. 492–514, <https://doi.org/10.1525/as.2014.54.3.492>.
18. Author's Interview with Ma Ying-jeou, ROC President, Taipei, Taiwan, ROC, August 6, 2013.
19. Frank Ching, "Taiwan Can Play Peacemaker in SCS Disputes," *South China Morning Post*, May 20, 2014, <http://www.scmp.com/comment/article/1516102/taiwan-can-play-peacemaker-south-china-sea-disputes>.
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21. "Ma Touts South China Sea Plan," *Taipei Times*, May 27, 2015, <http://taipeitimes.com/news/frontprint/2015/05/27/2003619250>.
22. *Compilation of Historical Archives on the Southern Territories of the Republic of China*, p. 11.
23. "Ma Reaffirms Peacemaking Role in South China Sea."
24. Numerous official ROC government documents pertaining to the South China Sea (including those from the Ma administration and the Tsai administration), may be reviewed at Ministry of Foreign Affairs, *South China Sea Issue*, <https://www.mofa.gov.tw/en/theme.aspx?n=E5A0D5E2432C234D&s=83376F561B7165E6&sms=BCDE19B435833080>.
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26. "Armed Vessels May Stay on Itu Aba," *Taipei Times*, October 17, 2014, <http://www.taipeitimes.com/News/taiwan/print/2014/10/17/2003602283>.
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28. See *Press Release, Minister of the Interior, Republic of China, December 12, 2015*. Document provided to the author by courtesy of Jack J. C. Yang, Director General, Taipei Economic and Cultural Office, Denver, Colorado.
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Biographical Statement

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Rival Partners? Cross-Strait Relations After the Permanent Court of Arbitration Ruling Over the South China Sea Disputes

Enyu Zhang and Yitan Li

Structured Abstract

Article Type: Research Paper

Purpose—While many recent studies on the territorial and maritime disputes in the South China Sea focused on the interactions between China on the one hand and Vietnam, the Philippines, and the United States on the other, limited analysis has looked into the implications of the 2016 Permanent Court of Arbitration (PCA) ruling over the South China Sea Arbitration (the Republic of the Philippines v. the People’s Republic of China) on the two claimants—the People’s Republic of China (PRC) and the Republic of China (ROC) on Taiwan—with almost identical claims and their bilateral relations. This paper seeks to fill this gap by examining how recent development, especially the PCA ruling, has affected the PRC’s and ROC’s approaches to the South China Sea disputes and Cross-Strait relations.

Design, Methodology, and Approach—Based on a historical analysis of the PRC’s and ROC’s territorial and maritime claims in the South China Sea and a qualitative investigation of primary and secondary sources relevant to the PCA ruling and reactions from both sides of the Taiwan Strait, this paper attempts to shed light on the rival partnership and the dilemma facing both sides over their South China Sea claims and identify options and prospects for them to move forward. The study

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begins with an overview of the territorial and maritime disputes in the South China Sea. It further examines the PRC's and ROC's overlapping claims based on historic rights. Then the study compares and analyzes the approaches adopted by the PRC and ROC before and after the PCA ruling. Finally, the study identifies policy options for both sides to move forward on the South China Sea disputes.

Findings—This study has several findings. First, the PCA ruling seemed to have a striking effect of pulling the PRC and ROC, the two rival claimants in the South China Sea, closer in their uncoordinated, uneasy “partnership” of defiance against the ruling. Second, the detrimental impact of the PCA ruling and the rival partnership across the Strait further accentuate the dilemma Beijing and Taipei both face in the South China Sea disputes. Third, contrary to conventional wisdom, the study argues that this could be a window of opportunity to enhance the political cooperation across the Taiwan Strait. The paper suggests that the PRC and ROC can and should enhance dialogues and strengthen cooperation through Track II channels to defend their common claims and interests in the South China Sea.

Practical Implications—This study presents a unique and interesting perspective on the relations between the PRC and ROC and how they may move forward on the territorial and maritime disputes in the South China Sea after the 2016 PCA ruling.

Originality/Value—Although much has been written about the territorial and maritime disputes in the South China Sea, few studies have focused on the intersection of the South China Sea disputes and Cross-Strait relations between two of the claimants, the PRC and the ROC on Taiwan.

Key Words: Cross-Strait Relations, PCA Ruling, People's Republic of China, Republic of China (Taiwan), South China Sea, sovereign territory and maritime disputes

Introduction

With the vast body of water of approximate 648,000 square nautical miles (3.5 million square kilometers), the South China Sea contains one of the world's most strategic choke points and crucial sea-lanes connecting the Indian Ocean, the Pacific, and the littoral countries in Asia. For thousands of years, it was a vast and remote test ground for courage and persistence for sailors, merchants, and explorers. Nowadays, it carries over half of the world's annual merchant fleet tonnage and a third of all maritime traffic worldwide.¹ Its shipping lanes are indispensable to transport two thirds of South Korea's energy supplies, nearly 60 percent of Japan's and Taiwan's energy supplies, and four fifths of China's crude oil supplies. It also includes hundreds of islands, reefs, and shoals that are claimed by six parties in littoral Asia.

In 2011, geopolitical thinker Robert D. Kaplan declared in his special report in *Foreign Policy*: “The South China Sea is the future of conflict.”² Since then, escalation of tensions over disputed territory and adjacent waters in the region seems to have confirmed the trajectory of conflict, both legally and militarily. On January 22, 2013, the Philippines initiated compulsory arbitration proceedings at the Permanent Court

of Arbitration (PCA) against the People's Republic of China (PRC) under Article 287 and Annex VII to the United Nations Convention on the Law of the Sea (UNCLOS). On July 12, 2016, the PCA ruled in favor of the Philippines while rejecting or opting out of consideration of the positions of the PRC, which vehemently opposed the ruling and refused to comply.

More importantly, in spite of their official neutrality, non-claimants with enormous strategic interests in the region, i.e., the United States, Japan, Australia, and India,³ have increasingly involved and even supported some of the claimants such as Vietnam and the Philippines through diplomatic rhetoric, legal and military assistances. The U.S. led the regional campaign to openly and verbally challenge China's "excessive claims" in the South China Sea. In 2010, the then-Secretary of State Hillary R. Clinton declared at the Association of Southeast Asian Nations (ASEAN) Regional Forum (ARF) meeting in Hanoi that peaceful resolution of the South China Sea disputes is a "U.S. national interest" and that the U.S. opposes the use or threat of force by any claimant. This declaration emboldened ASEAN member states to openly raise their concerns about China's territorial claims. Beijing sharply criticized the U.S. meddling in what China perceives as bilateral territorial disputes.

The most serious "in-your-face" challenge to China came from the U.S. Navy's six freedom of navigation operations (FONOPs) between 2013 and 2016 in or around its claimed territorial waters. These coercive operations have brought the U.S. and PRC navies and air forces ever closer to armed conflict. With China's dramatic economic rise and perceived growing military activism in East Asia and the gradual but evident decline of the U.S. power, the South China Sea suddenly poised to become a high-stake battle ground for armed conflict among the most powerful players in the contemporary time.

The rapidly growing body of research and studies about the contested South China Sea in recent years largely focuses on three main areas: (1) the complex nature of the claims in sovereignty and maritime rights in the South China Sea, involving six parties from the littoral entities⁴; (2) legal issues surrounding the definitions of an island, islet, reef, rock, shoal, etc., in the UNCLOS⁵; and (3) the potential for a high-stake battle ground in the armed conflict between the U.S. and China.⁶

With a few important exceptions,⁷ however, little research has centered on the intersection of the South China Sea disputes and the relations between two of the claimants, the PRC and the ROC on Taiwan. Both have almost identical territorial and maritime claims and both have occupied and fortified different islands and reefs in the South China Sea. However, the disputed status of Taiwan vis-à-vis China and the more contentious relations between the Xi Jinping and Tsai Ing-wen administrations have further complicated the delicate positions of Beijing and Taipei over the South China Sea in the post-arbitration ruling context. Without a better understanding of this complicated dynamic, it would be difficult to move the dialogues and negotiations about the South China Sea disputes forward. Therefore, this paper seeks to examine the PRC's and the ROC's approaches to the South China Sea disputes and how the Cross-Strait relations have affected their positions on their sovereign and territorial claims in the South China Sea.

The paper begins with a brief overview of the territorial and maritime disputes in the South China Sea. After comparing the approaches of the PRC and ROC on these disputes, it further analyzes the implications of the PCA ruling, the policy options for both sides, and the prospects for Cross-Strait relations. The paper argues that the South China Sea disputes could become a window of opportunity to enhance political and strategic cooperation across the Taiwan Strait and that Taiwan should be invited to participate in the shaping process of a multilateral framework towards the eventual resolution of the territorial and maritime disputes in the South China Sea.

Territorial and Maritime Disputes in the South China Sea

Since the late 20th century, the hundreds of islets, reefs, shoals, and rocks spread across the South China Sea have been increasingly contested among seven littoral states—the PRC, ROC, Vietnam, the Philippines, Malaysia, Indonesia, and Brunei—for sovereignty and maritime rights over part or nearly all of the South China Sea. For each party, the territorial and maritime claims are rooted in the historic rights, legal rights under the 1982 UNCLOS, or a combination of both.⁸

Beyond multiple claimants of various overlapping areas, numerous legal issues derived from international law, including UNCLOS, are still hotly debated and contested. One of the key issues is how to define a geographical feature of an island. Paragraph I of Article 121 in UNCLOS states, “An island is a naturally formed area of land, surrounded by water, which is above water at high tide.” Paragraph III stipulates, “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” It is worth noting that UNCLOS does not specify any operationalized criteria to define and distinguish rocks, islets, isles, and islands. In addition, it is unclear how to interpret the meaning of “cannot sustain human habitation or economic life of their own.”⁹

Another key issue is the delimitation of Exclusive Economic Zones (EEZs) and Continental Shelves (CS). Per UNCLOS, ownership of an island would entitle the state up to 200 nautical miles of surrounding waters as its EEZ while ownership of a rock or an islet would only entitle the claimant state up to 12 miles of surrounding territorial water. However, operationally there is no accurate and “current data on whether features are above or below water at different tide levels.”¹⁰

The disputes in the South China Sea are multi-layered and complicated in nature. Disputes over sovereignty and territorial integrity, even over tiny and remote territories in the oceans, will be the most intractable to resolve, because the symbolic value and indivisible nature, rather than strategic and economic values, make them far more difficult to settle. Leaders tend to face extremely high political risks and would have to pay a much higher price domestically when they make compromises that often will be perceived to be a sellout of the state’s fundamental national interest. When sovereignty and territorial disputes are framed as inexcusable loss and leaders

cornered into the domain of loss, according to the Prospect Theory, leaders tend to take greater risks with irrational behavior to avoid hefty political price at home.¹¹ Among the six claimants in the South China Sea disputes, all claim part or all of the Spratly Islands and all but Brunei have accelerated grabbing islets and shoals and building military structures and lighthouses on those features to bolster their respective claims.¹²

In comparison, economic rights and resource-related rights (e.g., fishing rights and rights to develop gas fields) in the disputed territory are *relatively* easier to settle because these rights are considered divisible and shareable. Therefore, when leaders wish to maintain peace and avoid armed conflict, they tend to propose to shelve the disputes over sovereignty while seeking to cooperate with competing claimants to develop the resources in the disputed area together. Chinese leader Deng Xiaoping's proposal and Taiwan's former president Ma Ying-jeou's South China Sea Initiatives are two cases in point. In this spirit, in 2002, after prolonged negotiations, China and ASEAN signed the DOC in the South China Sea to reduce tension and build confidence for all parties (except Taiwan) to manage the overlapping disputes.

In spite of this, economic rights and other rights to use the disputed territory are intricately linked with disputes over sovereignty and territorial integrity. The linkage makes practical cooperation for economic development and environmental protection significantly conditioned on the political and strategic bargaining over sovereign rights. Therefore, as demonstrated in the incidents among the claimants near the disputed islands and overlapping EEZs in the South and East China Seas in recent years, contentious disputes related to fishing rights tended to become flash-points that often escalate tensions and trigger diplomatic altercations and nationalistic protests among the claimant states.

The PRC and the ROC on Taiwan: Parallel Rival Claims in the South China Sea

With a shared and contentious history in the early 20th century, the PRC and the ROC have almost identical claims over the legal status of the land features in the South China Sea.¹³ Both governments share the consensus that China has the historic rights to the above-mentioned islands and the adjacent waters in the East and South China Seas¹⁴ although they disagree on which government is the legitimate representative of China.

In the 2016 Taiwan Yearbook issued by the ROC Executive Yuan, Taiwan's territory includes:

About 12 kilometers off the southwest coast of Taiwan, Xiaoliuqiu 小琉球 covers an area of 6.80 square kilometers. Other islands in the South China Sea claimed by the ROC include the Dongsha (Pratas) Islands 東沙群島, the Nansha (Spratly) Islands 南沙群島, the Xisha (Paracel) Islands 西沙群島 and the Zhongsha Islands (Macclesfield Bank) 中沙群島. Further, lying about 170 kilometers northeast of Taiwan is the Diaoyutai Islands 釣魚臺列嶼, a small island group

that includes Diaoyutai Island 釣魚臺, Huangwei Isle 黃尾嶼 and Chiwei Isle 赤尾嶼.¹⁵

Similarly, the ROC Ministry of Foreign Affairs states in its 2016 Yearbook: “The Diaoyutai Islands, which lie northeast of Taiwan, and a number of islands in the South China Sea, including those in the Tungsha (Pratas), Nansha (Spratly), Shisha (Paracel) and Chungsha (Macclesfield Bank) islands, are also part of the territory of the ROC.”¹⁶

The PRC’s claims are analogous to the ROC’s. Article 2 of the Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone states,

The territorial sea of the People’s Republic of China is the sea belt adjacent to the land territory and internal waters of the People’s Republic of China.

The land territory of the People’s Republic of China includes the mainland of the People’s Republic of China and its coastal islands; Taiwan and all islands appertaining thereto including the Diaoyu Islands (釣魚島), the Penghu Islands (澎湖列島); the Dongsha Islands (東沙群島); the Xisha Islands (西沙群島); the Zhongsha Islands (中沙群島) and the Nansha Islands (南沙群島); as well as all the other islands belonging to the People’s Republic of China.¹⁷

Similarly, according to China’s Ocean Development Report (2011, p. 24),

The Xisha Islands (西沙群島) comprise 32 islands and islets, each possessing a surface area larger than five hundred square meters; the Zhongsha Islands (中沙群島) are composed of rocks, sandbanks, and reefs, among which, by virtue of two rocks, only Huan Yan Island (黃岩島 or Scarborough Shoal) rises above sea level at high tide; the Nansha Islands (南沙群島) consist of over 230 islands, islets, rocks, banks, and shoals, among which 25 are islands.¹⁸

On May 7 and 8, 2009, the PRC government submitted two Notes Verbales to the then United Nations Secretary-General Ban Ki-Moon, declaring:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsolid thereof.... The above position is consistently held by the Chinese Government, and is widely known by the international community.

The continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and the Socialist Republic of Vietnam has seriously infringed China’s sovereignty, sovereign rights and jurisdiction in the South China Sea.¹⁹

Similar to the ROC’s position, the PRC’s territorial claims are based on the “Nine-Dash Line,” also known as the “U-Shaped Line,” which was modified from the “Eleven-Dash Line” map of 1946 issued by the ROC’s Department of the Territories and Boundaries of the Ministry of the Interior.²⁰ Based on their common understanding of historic rights, both parties draw on the same historical evidence, including historical documents kept by fishermen living in Hainan Island.²¹ An important piece of such documents is *Geng Lu Bu* (更路簿 or *The Manual of Sea Routes*), a 600-year-old handwritten manual for fishermen in Hainan Island that

details the locations of land features, navigation routes, fishing grounds, and ocean conditions of the South China Sea. In addition, both governments emphasize specific provisions in the Cairo Declaration and Potsdam Proclamation as the legal basis for Japan to return the islands in the South and East China Seas after its unconditional surrender in the Second World War. Last, but not least, both governments declare that their positions on historic rights are consistent with international law and practice, including UNCLOS.²²

However, the PRC and ROC disagree on which government should claim sovereignty and maritime rights over the disputed islands and adjacent waters. From Beijing's perspective, the historic rights are rooted in the understanding that the PRC is the legitimate successor of the ROC after defeating the ROC's KMT government in the Chinese Civil War in 1949, which symbolized the decease of the ROC. On the contrary, from Taipei's perspective, the ROC has never ceded its existence; it only moved its government from the mainland to the island of Taiwan. After nearly seven decades of diplomatic battle and coercive diplomacy, the PRC has managed to break international isolation in the 1970s and isolated the ROC's diplomatic space to the minimum. In the context of the South China Sea disputes, the ROC is not recognized as a state claimant and thus not allowed to join diplomatic negotiations or international legal proceedings.

The PRC and the ROC on Taiwan: Rival Partners on the South China Sea Disputes?

Under various domestic and international pressures, the PRC and the ROC, have pursued diverging approaches to the territorial and maritime disputes in the South China Sea, which resulted in different scope of *de facto* control over the claimed islands and adjacent waters. However, with the detrimental impact on both sides of the Taiwan Strait, the PCA ruling has had a striking effect of pulling the two rival claimants closer in their uncoordinated reactions. This may be an opportunity for the PRC and ROC to work together in pursuing solutions to the territorial and maritime disputes.

The PRC's Approach Before the PCA Ruling

With a few exceptions of armed clashes, China's approach to seizing and solidifying control over the maritime features in the South China Sea can be characterized as firm, persistent, yet incremental and measured, with self-restraint. Among the disputed islands, reefs, and atolls in the South China Sea, China currently has *de facto* control over seven reefs in the Spratly Islands and the entire Xisha/Paracel Islands, including the largest Yongxing (永兴岛/Woody/Phu Lam) Island, on which it built a military airfield in 1990. In 1974 and 1988, China had two armed clashes with Vietnam over Xisha/Paracel Islands and Johnson South Reef in Nansha/Spratly, respectively.

In the flare-ups in the South China Sea since 2010, China has regarded itself as a latecomer playing catch-up in “land grabbing” and infrastructure-building activities as other claimants have been unduly doing so quietly for years. As Chan points out:

[C]ontrary to conventional renditions that cast Beijing in the role of a challenger, China has often been engaging in its own deterrence against attempts by rival claimants perceived by it to be altering the status quo unilaterally. In undertaking this policy, Beijing has usually been the defender, and has been generally disposed to put aside these disputes in conducting its relations with the other claimant states rather than seeking confrontations with them.²³

As a result, China has become more assertive in defending and strengthening the maritime features it currently controls. Since 2010, Chinese Maritime Law Enforcement Forces (MLEFs) and the People’s Liberation Army (PLA) have had a dozen incidents with several claimants, most notably Vietnam and the Philippines, across the Nansha/Spratly Islands.

Playing catch-up through administrative re-organization, on July 24, 2012, the PRC officially put Yongxing under the administration of the newly established Sansha City (三沙市) in Hainan Province. Since then, the PRC has launched a blizzard of nationalist and public relations campaigns to bolster its administrative control over Yongxing. History, poetry, arts, music, and tourism are all prominently featured in the Chinese media to promote patriotism and solidify China’s sovereignty over Xisha/Paracel Islands, including Yongxing.

By advancing its economic interests, in 2014, the PRC moved *Haiyang Shiyou* 981, an oil rig of the state-owned China National Offshore Oil Corporation, near the disputed Paracel Islands in the South China Sea and caused an intense standoff between the PRC and Vietnam, involving confrontations of multiple ships from both sides, diplomatic protests, and numerous anti-China demonstrations and riots across Vietnam.

Immediately after the Philippines initiated the PCA arbitral proceedings, the PRC has adopted the “non-acceptance and non-participation” position and denounced the Philippines’ unfriendly move and the PCA’s lack of jurisdiction over the case. On January 23, 2013, the day after the Philippines filed the proceedings, the PRC Ministry of Foreign Affairs Spokesperson Hong Lei reiterated that China has “indisputable sovereignty over the South China Sea islands and adjacent waters, which has abundant historical and legal grounds.”²⁴ Beijing’s position was further elaborated in the official Position Paper issued by the PRC Ministry of Foreign Affairs on December 7, 2014.²⁵

More significantly, according to the Island Tracker of the Asia Maritime Transparency Initiative, since 2014, China has done extensive and fast land reclamation for 3,000 acres on Cuarteron, Fiery Cross, Gaven, Hughes, Johnson South, Mischief, and Subi, the seven reefs it currently occupies in Nansha/Spratly, making artificial islands and building airstrips, ports, radar facilities, solar arrays, lighthouses, and other supporting facilities on them.²⁶ Widely seen as backed by the country’s economic rise, growing external influence, and an assertive leadership in Beijing, these

actions were loudly criticized outside of China as unilateral, aggressive changes of the status quo against international law and as the source of growing tensions disrupting regional stability. With the exception of the ROC, the other claimants in the South China Sea disputes criticized China's unilateral moves as a violation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC).

From Beijing's perspective, however, such biased criticisms come from an over-emphasis on China's growing military capabilities and presumed aggressive intentions and from one-sided silence on the other claimants' earlier, similar "land grabs" in their occupied reefs in Xisha/Paracel and Nansha/Spratly, particularly Vietnam's and the Philippine's. While U.S. satellite images have shown military development on these newly expanded islands, Beijing has denied such allegations and insisted that construction on these reefs is intended to build up capabilities to support civilian activities, including fishing safety, disaster relief, and navigation safety. Chinese media report that China has built four lighthouses on Huayang 华阳礁/Guarteron, Chigua 赤瓜礁/Johnson South, Zhubi 渚碧礁/Subi, and Yongshu 永暑礁/Fiery Cross Reefs and is building a fifth one on Meiji 美济礁/Mischief Reef to enhance navigation safety for fishing and other commercial vessels. Furthermore, unlike leaders of some of the other parties in territorial disputes, Chinese leaders have not talked about or planned for paying a visit to any of the disputed islands, which no doubt would further escalate the conflict.

It is crucial to consider the PRC's South China Sea claims in the broader context of its overall approach to territorial disputes, including land border disputes. The PRC has never resorted to the international legal institutions, including the International Court of Justice (ICJ) and other international tribunals, to settle its territorial disputes.²⁷ Instead, it has always preferred bilateral consultation and negotiation. The eminent scholar on the PRC's territorial disputes M. Taylor Fravel has characterized China's overall strategy for handling land territorial disputes with its neighbors as "reactive assertiveness."²⁸ With India as the main exception, the PRC has demonstrated more conciliatory flexibility to settling land border disputes with its neighbors. Between 1945 and 2012, the PRC was a party to more than half of the 34 territorial dispute settlements in Asia among 27 pairs of states.²⁹ Equally significant, Beijing offered significant concessions over the territory being contest in 15 of the 17 settlements of its territorial disputes.³⁰ In the context of the PRC's rising power and influence, the South China Sea disputes will be a litmus test as to the extent to which Beijing might change its approach to maritime border disputes from its traditional approach to land border disputes. However, this is beyond the scope of this study and will need to be further examined in future research.

The ROC's Approach Before the PCA Ruling

The ROC's strategy towards the South China Sea disputes has been more assertive, persistent, firm, and actual enforcement through continuous administration. The ROC was the first claimant to have militarized the territorial and maritime disputes in the South China Sea. On December 12, 1946, two ROC Navy ships, the

Taiping and *Zhongye* (the former *USS Decker* and *USS LST 1056* respectively), landed on Taiping/Itu Aba.³¹ In January 1947, just days earlier than the French forces from Vietnam, Chiang Kai-shek first ordered his KMT forces to land on and occupy Yongxing/Woody Island, the largest of Xisha/Paracel Islands. The ROC government subsequently announced the “Eleven-dash Line”³² to claim the South China Sea as its sovereign territory.

In July 1956, the ROC navy occupied Taiping/Itu Aba Island, the biggest and the only land feature in Nansha/Spratly Islands with its own fresh water supply. Since then, the ROC on Taiwan has maintained a continuous presence on Taiping/Itu Aba and officially administered it under Qijin District, Kaohsiung City. At its peak, the ROC was estimated to have stationed about 500 troops on Taiping/Ita Aba. Since 2000, in an effort to reduce regional tension, Taipei has replaced the Marine Corps with Coast Guards to station on Taiping/Itu Aba.³³ In addition, the ROC also regularly patrols the nearby Zhongzhou Reef and controls Dongsha/Pratas, the largest island cluster in the South China Sea.

During the Chen Shui-bian administration (2000–2008), the ROC backed its assertive claims over the South China Sea with concrete actions. In 2007, it built an airfield on Taiping/Ita Aba that is capable of landing large military aircrafts such as C-130 Hercules. In the last year in his office, as a show of strength, Chen became the first ROC president to pay a high-profile visit to Taiping/Itu Aba accompanied by half of the ROC’s main naval warships and a couple of submarines.³⁴ It was clear that Chen’s pro-independence stance did not weaken but strengthened Taiwan’s sovereign and territorial claims in the South China Sea.

During the Ma Ying-jeou administration (2008–2016), the ROC remained seized of the matter and spent more than U.S.\$100 million to make several major infrastructure upgrades on Taiping/Itu Aba, including building an antenna tower, extending the airstrip, and building a 3,000-tonnage port facility.³⁵ As tension over the disputed waters intensified, on May 26, 2015, Ma formally announced his South China Sea Peace Initiative: “[W]e emphasize that while sovereignty cannot be divided, resources can be shared, thereby replacing sovereignty disputes with resource sharing.”³⁶ This was modeled after his East China Sea Initiative proposed in August 2012. These initiatives were meant to demonstrate the ROC’s firm claims on territorial sovereignty as well as its desire for more diplomatic space to peacefully resolve the disputes. However, given Taiwan’s special non-state status and hence the limited role it can play in negotiations with other state claimants, the real impact of these initiatives will be quite limited as well. As shown in the trilateral territorial and maritime disputes over Diaoyu/Senkaku Islands, both Japan and the PRC ignored the East China Sea Initiative.³⁷ Although the ROC has participated in numerous informal bilateral and multilateral Track II workshops and conferences regarding the South China Sea disputes, the realistic chance for Taiwan to be formally accepted as a claimant party is very slim if cross-strait status quo remains.

On January 28, 2016, just a few months before his presidency would expire, Ma also led government officials and scholars to pay a high-profile visit to Taiping/Itu Aba despite mounting pressure and criticism from the U.S. and the other claimants,

especially the Philippines and Vietnam. In his speech delivered on Taiping/Itu Aba, Ma explained his South China Sea Peace Initiative by first reaffirming the ROC's historic rights to the disputed waters:

In response to the decades of dispute regarding sovereignty over the South China Sea Islands and maritime rights, we must state clearly that these islands were first discovered, named, and used by the Chinese in the Western Han dynasty (in the first century BCE). They were incorporated into the maritime defense system no later than 1721, in the Kangxi period of the Qing dynasty, with patrols and other management measures. After the ROC was founded in 1912, the government published maps of the South China Sea Islands in 1935 and 1947, reaffirming to the international community ROC sovereignty over the islands and their surrounding waters.

Whether from the perspective of history, geography, or international law, the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters, and the ROC enjoys all rights over these islands and their surrounding waters in accordance with international law. This is indisputable. To resolve disputes in the South China Sea, the ROC government will work to safeguard sovereignty, shelve disputes, pursue peace and reciprocity, and promote joint development.³⁸

Two months after his visit, an ROC air force C-130 transport flew two dozens of journalists from international media to Taiping/Itu Aba to witness how the island supports human habitation with its own fresh water supply and natural habitat and how the ROC has developed the island with peaceful and eco-friendly ways.³⁹ This was intended to refute any legal challenge that Taiping/Itu Aba is not an island with its EEZ.

Before the PCA ruling, the South China Sea policy of the current ROC President Tsai Ing-wen was not yet clear. As President-Elect, on the evening of her victory day, Tsai elaborated her position on the South China Sea during an international press conference: 1) her administration will reaffirm its sovereignty over the South China Sea; 2) it will call on all parties to abide by international law; 3) it will support freedom of navigation and overflight in disputed areas; 4) it will oppose provocative actions that increase regional tensions; and 5) it will continue to express hope for a peaceful resolution to the maritime territorial disputes.⁴⁰ It is notable that Tsai Ing-wen avoided mentioning two of the main points in Ma Ying-jeou's South China Sea Initiative, i.e., shelving the sovereignty disputes and joint development of resources. On the other hand, Tsai highlighted the importance of abiding by international law and supporting freedom of navigation although the ROC is not a party to UNCLOS due to its non-state status. This may signal Tsai's desire to distance Taiwan from its overlapping claims with the PRC and to move closer to the position of the U.S. and other non-claimant stakeholders on the South China Sea disputes.

However, domestic pressures for defending the ROC's maritime sovereignty and interests may force the Tsai Ing-wen administration to change its less assertive stance. Since taking office, Tsai has been called by many, including Ma Ying-jeou, to pay a presidential visit to Taiping/Itu Aba as a show of resolve to defend the

ROC's sovereignty and territorial integrity. In August 2016, a month after the arbitration ruling, Tsai sent her Interior Minister Yeh Jiunn-rong and a group of officials and researchers to visit Taiping/Itu Aba.⁴¹ From March 27 to 29, 2017, the ROC Coast Guard on Taiping/Itu Aba conducted the first live-fire exercise under her administration, which subsequently drew sharp criticism from Vietnam.⁴²

Rival Partners? Cross-Strait Reactions to the PCA Arbitration Ruling

While neither the PRC or the ROC accepts it or considers it legitimate, the legal implications of the arbitration ruling are direct and far reaching. It was a detrimental blow to the PRC's sovereign and maritime rights and entitlements in the South China Sea.⁴³ First, the PCA ruled that the PRC's claims based on historic rights and the Nine-dash Line are contrary to UNCLOS because they exceed the geographic and substantive limits of its maritime entitlements under UNCLOS. Second, in the PCA ruling, none of the high-tide natural features⁴⁴ in Nansha/Spratly or Scarborough Shoal is defined as an "island" under Article 121 of UNCLOS and thus none is entitled to a 200-nautical-mile EEZ or continental shelf. Most notably, Taiping/Itu Aba, the largest natural land feature in the Spratly Islands, is defined as merely an "uninhabitable rock" that does not generate an EEZ or continental shelf. Third, the PCA defines Mischief Reef as merely a low-tide elevation that cannot be deemed sovereign territory. Moreover, the PCA ruled that the PRC has no sovereign rights or jurisdiction over Mischief Reef because it sits on the continent shelf of the Philippines. Fourth, although land reclamation and artificial island-building on "rocks" are deemed legal, the PCA criticized these activities by the PRC for their harmful impact on the marine ecology.⁴⁵ As will be shown below, such damaging impact is evident from Beijing's strong objections and defiance immediately before and after the ruling was announced. It may weaken Beijing's leverage at the negotiation table with the other claimants.

With advance notice, the growing assertiveness and converging positions from both sides of the Taiwan Strait became especially pronounced immediately before and after July 12, 2016, when the PCA ruled in favor of the Philippine's charges against the PRC.⁴⁶ On the day before and after the ruling, the PRC Ministry of Foreign Affairs Spokesperson Lu Kang lodged strong protests and declared the PCA ruling "null and void, with no binding force,"⁴⁷ as Beijing had done since the Philippines' unilateral initiation of the arbitration proceedings in 2013. As a show of defiance, on July 13, 2016, two PRC passenger airliners landed respectively on the newly built airfields in Meiji 美济礁/Mischief Reef and Zhubi 渚碧礁/Subi Reef. With the airfield on Yongshu 永暑礁/Fiery Cross Reef, China now has three functioning airfields in the South China Sea. On July 16, 2017, the PRC Vice Foreign Minister Zhang Yesui reiterates Beijing's objection and "non-acceptance" position: "China opposes and will not accept any proposition and action based on the award and will never negotiate with any other country over the South China Sea based on the illegal award."⁴⁸

Due to Taipei's analogous claims to Beijing's, the arbitration ruling had a similar detrimental effect on the ROC even though it was not a party in the arbitration case. The first three points of the PCA ruling summed up above are crucial to the ROC's claims and interests, especially with regards to the legal status of Taiping/Itu Aba and the maritime rights it extends. As a result, the ROC reacted to the PCA ruling as swiftly and furiously as the PRC. On the same day when the ruling was formally announced, the ROC Presidential Office, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Defense, and Mainland Affairs Council, along with some members of the Legislative Yuan, all issued their own statements rejecting the ruling as "absolutely unacceptable." The ROC Ministry of Foreign Affairs called the ruling "completely unacceptable" and has "no legal binding force on the ROC." In reference to the legal status of Taiping/Itu Aba, the ROC Ministry of Foreign Affairs strongly criticized the illegitimate expansion of the PCA's authority beyond the case involving the disputes between the Philippines and the PRC: "The decision severely jeopardizes the legal status of the South China Sea Islands, over which the ROC exercises sovereignty and their relevant maritime rights."⁴⁹

Beyond verbal rejections of the arbitration ruling, the Tsai Ing-wen administration stepped up with more forceful show of resolve. On the day before the PCA ruling announcement, it had dispatched a Coast Guard vessel the *Wei Hsing* to Taiping/Itu Aba for a resupply and patrol mission. Two days after the ruling, the ROC dispatched a naval vessel, the *Lafayette*-class frigate, for a patrol mission in the South China Sea. In August 2017, the ROC Coast Guard conducted another round of live-fire drills on Taiping/Itu Aba, leading to new verbal spat between the ROC and Vietnam.⁵⁰

Post-Arbitration Dilemmas

Contrary to conventional wisdom, both Beijing and Taipei chose similarly high-profile reactions against the PCA ruling. The two rival claimants have found each other in an uncoordinated, uneasy "partnership" of defiance. The detrimental impact of the PCA ruling and the rival partnership across the Strait further accentuate the dilemma Beijing and Taipei both face in the South China Sea disputes.

On the one hand, the PRC does not recognize the ROC as a legitimate state party in the South China Sea disputes, and with its growing economic and diplomatic clout, has left almost no diplomatic space for the ROC to negotiate with the other claimants. Moreover, the pro-independence, de-Sinification inclinations of Tsai Ing-wen and the Democratic Progressive Party (DPP) she leads cannot be further from the anti-independence, anti-secession position of Xi Jinping and the Chinese Communist Party he leads. Without Tsai's explicit acknowledgment of the 1992 Consensus, Beijing has sharply criticized the Tsai administration and taken several measures to cool down Cross-Strait relations since Tsai came to power. For example, cross-strait tourism has significantly slowed down since Tsai took office. Beijing has practically ended the "diplomatic truce"⁵¹ with Taiwan by restarting its efforts to snatch away Taiwan's diplomatic allies. Since Tsai took office, São Tomé and Príncipe and

Panama have severed diplomatic relations with the ROC, further reducing Taiwan's diplomatic allies to only 20.

On the other hand, the PRC's territorial and sovereign claims significantly hinges on the ROC's assertion and enforcement of those claims since the 1930 and 1940s before Chiang Kai-shek's KMT government lost the Chinese Civil War. Regardless which political party holds power in Taipei, the fact that the ROC exercises *de facto* sovereign control of some islands and reefs in the South China Sea reinforces the ROC's own *de facto* sovereignty. In spite of this, Beijing still prefers Taipei to keep a firm hand on the territories over which the latter has *de facto* control. Under the DPP rule, any sign of Taipei's weakened defense of Taiping/Ita Aba could be interpreted as Taiwan's de-Sinification move towards building its own identity and possibly towards its own *de jure* independence. For instance, Taiwan's former President Chen Shui-bian's scrapping of the 1993 "Policy Guidelines for the South China Sea" raised fear in Beijing that Chen was leading Taiwan to abandon the claims in the South China Sea and move towards independence.⁵²

Moreover, without diplomatic recognition from the other claimants, the ROC has to rely on the PRC to use the latter's political, economic, and diplomatic clout to defend their commonly shared territorial and maritime claims and seek potential resolution through consultation and negotiation. During the PCA hearings, the ROC was not allowed to participate as a *de jure* independent state, and not even as an observer to the PCA hearings,⁵³ while the direct legal challenge to the legitimacy of its claims came from the Philippine's legal case against the PRC.

With regard to territorial and maritime disputes in the South China Sea, the ROC are stuck between a rock and a hard place. If the ROC refuses to cooperate with the PRC on the sovereignty and maritime claims in the South China Sea, many people in Taiwan, especially from the Pan-Blue coalitions will strongly oppose it. If the ROC cooperates with PRC, Beijing will continue to gain the upper hand if the ROC holds onto the claims for China while remains isolated without statehood.

Prospects for Cross-Strait Relations: Policy Options and Recommendations

Moving forward, the status of Taiwan remains the biggest conundrum for both Beijing and Taipei. Which is the rightful claimant of the South China Sea, the PRC or the ROC? The answer has direct impact on the territorial and maritime disputes. More importantly, it is the crux of the matter in Cross-Strait relations. Resolving the central issue of sovereignty concerning Taiwan would resolve Cross-Strait rival claims over the South China Sea. Ideally, peaceful reunification of Taiwan with China in some shape or form, through bilateral negotiations or international tribunals, would significantly strengthen the leverage of the reunified China vis-à-vis the other claimants on the South China Sea disputes.

Given the preference for maintaining the status quo within Taiwan, especially with the recent de-Sinification movement and the creation of a unique Taiwanese

identity that is separate from the dominant Chinese identity on the mainland, peaceful reunification with the mainland seems unlikely in the short run.⁵⁴ Short of reunification, the 1992 Consensus remains a most viable solution to the dilemma, both politically and diplomatically. Especially in the post-arbitration context, explicit mutual acceptance of the 1992 Consensus may make it easier for both sides to tacitly manage their respective claims over the South China Sea and coordinate policies through Track II mechanisms. Meanwhile, the legal implications on the status of Taiping/Itu Aba and other reefs may not serve as sufficient incentive to pull the Tsai administration closer to Beijing. As shown in the growing assertiveness of both KMT and DPP leaders from the past, partisan politics in the ROC may significantly shift its approach to the claims in the South China Sea.

Beijing and Taipei can and should develop a more pragmatic and flexible approach to maximizing cooperation and defending their parallel South China Sea claims. Putting aside Taiwan's non-state status and the non-acceptance position from Beijing and Taipei, Track II discussions have proven to be more candid and open-minded among scholars from both sides of the Taiwan Strait. In August 2016, for instance, at a Cross-Strait Track II conference hosted by the PRC's National Institute of the South China Sea Studies, scholars and experts from both sides openly discussed and debated the implications of the PCA ruling and how to forge further cooperation as a response. The consensus from the meeting openly acknowledged the negative long-term effect of the PCA ruling on the respective claims of both parties. In the meantime, many participants regarded the ruling as a window of opportunity for Beijing and Taipei to further cooperate to strengthen the common defense of the historic rights and the island status of Taiping and other islands/reefs in Nansha/Spratly and Scarborough Shoal. Furthermore, both parties can and should make joint initiatives for deeper cooperation in marine biology and environmental research and encourage joint development of tourism in the region.

In response to the legal challenge from the PCA ruling, Beijing and Taipei share the same interest in focusing on Japan's claim over Okinotorishima atoll, a ring-shaped reef and chain of rocks made of coral, with a current total area of less than 10 square meters (33 square feet), located 1,000 nautical miles to the south of Tokyo.⁵⁵ Following the legal implications of the PCA ruling, under Article 121 of UNCLOS, Okinotorishima may also be defined merely as an uninhabitable "rock," rather than an "island," and thus does not generate an EEZ around it for Japan. The potential legal challenge to Japan highly resembles those facing the PRC (and ROC as a non-party) in the PCA ruling. While neither Beijing nor Taipei disputes Tokyo's sovereignty over the Okinotorishima, highlighting Japan's claim of maritime rights to its EEZ centering on the Okinotorishima could potentially help them counter the legal implications of the PCA ruling and strengthen the defense of their EEZs in the South China Sea. Equally noteworthy, to bolster its territorial and maritime claims, Japan's artificial island building is similar in nature to what the PRC and ROC have done on their reefs and atolls in the South China Sea. Since 1987, Japan has built a three-story observatory on Okinotorishima and spent over \$600 million to prevent the atoll from further erosion by building an 82-foot concrete wall to encase the remaining

rock outcroppings and covering the smaller of the two atolls with a net of titanium.⁵⁶ In February 2016, Japan announced its plan to spend 13 billion yen (roughly U.S.\$114.1 million) to rebuild the observatory on Okinotorishima. Both parties can share legal expertise and monitor the development of this important case.

More importantly, as shown in the aftermath of the PCA ruling, the most viable short-term solution to the South China Sea disputes will not come from an international tribunal; instead, it may come from enhanced political dialogues and diplomatic negotiations for a Code of Conduct (COC) in the South China Sea between the PRC and ASEAN and the Code for Unplanned Encounters at Sea (CUES).⁵⁷ The arbitration ruling and growing militarized tensions in the region may have stoked a higher sense of urgency for the PRC and ASEAN to make a commitment for these goals. Without a seat at the table, the ROC should have more incentives to work with the PRC through Track II channels to coordinate positions and specific terms in the Code of Conduct.

Conclusion

This paper has examined the rival partnership between the PRC and ROC on their parallel but rival sovereign and maritime claims in the South China Sea in the post-arbitration ruling context. While the parallel in their claims is based on commonly shared historic rights and international law, the rivalry in their claims is rooted in the 70-decade conundrum of Taiwan's status and thus the different *de facto* exercise of sovereignty in the South China Sea.

The 2016 PCA ruling over the South China Sea disputes (the Philippines v. the PRC) has further boxed the PRC and ROC in this involuntary partnership in pursuit of their claims and interests. This was abundantly clear in their uncoordinated but common reactions opposing and defying the PCA ruling. While neither Beijing nor Taipei is willing to relinquish their territorial and maritime claims, neither side wants to undermine the other's, especially facing growing political, legal, and military challenges by the other claimants and outside pressures from the U.S. and Japan. Therefore, managing the rival partnership in the context of territorial and maritime disputes requires a delicate balancing act and a pragmatic and flexible approach.

With the implications of the PCA ruling, Beijing and Taiping need to enhance dialogues and strengthen cooperation through Track II channels to defend their parallel territorial and maritime claims in the South China Sea. This could help the two sides inch back closer to the 1992 Consensus. By accepting the existence of one China with different interpretations, the two sides could return to political dialogues about issues of common interests. The South China Sea issue is an existing area of common interests. Cooperation in the shared maritime and territorial claims in the South China Sea could lead to a functional spillover⁵⁸ to other areas of cooperation during a time of cooling relations between Taipei and Beijing. However, doing so would require putting aside the political conundrum across the Taiwan Strait.

Considering the limited possibility for the ROC to fully and equally participate

in Track I negotiations regarding the South China Sea disputes, the PRC and ROC should allow more frequent, pragmatic, and in-depth Track II collaborations to share legal expertise on the issues raised in the PCA ruling, explore more ways to enhance bilateral cooperation on issues such as scientific research, management of resources, and protection of marine ecosystems. More importantly, both sides should focus on maintaining regional peace and stability through diplomatic negotiations and seeking resolution to the territorial and maritime disputes. It would also be important to keep on monitoring this issue as the U.S. supremacy in the region continues to decline and China is poised to play a more important and assertive role in the region.

Notes

1. Robert D. Kaplan, *Asia's Cauldron: The South China Sea and the End of a Stable Pacific* (New York: Random House 2014), p. 9.

2. Robert D. Kaplan, "The South China Sea Is the Future of Conflict," *Foreign Policy*, August 15, 2011, <http://foreignpolicy.com/2011/08/15/the-south-china-sea-is-the-future-of-conflict/>, accessed August 25, 2017.

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6. Some of the recent examples include Leszek Buszynski, "The South China Sea: Oil, Maritime Claims, and U.S.–China Strategic Rivalry," *The Washington Quarter* 35(2) (2012), pp. 139–

156; Bonnie S. Glazer, "Armed Clash in the South China Sea," *Contingency Planning Memorandum No. 14*, Council on Foreign Relations, 2012.

7. *Ibid.*, Hickey (2016).

8. Because the scope of this study is limited to two of the claimant parties, the PRC and the ROC on Taiwan, the following section will only elaborate on the claims from them.

9. Robert W. Smith, "Maritime Delimitation in the South China Sea: Potentiality and Challenges," in Hu and McDorman (eds.), 2013, p. 19.

10. Schwatz, 2014, p. 2.

11. See Kai He and Huiyun Feng, *Prospect Theory and Foreign Policy Analysis in Asia-Pacific: Rational Leaders and Risky Behavior* (Oxon, OX: Routledge, 2012) and Steve Chan, *China's Troubled Waters: Maritime Disputes in Theoretical Perspective* (United Kingdom: Cambridge University Press, 2016).

12. *Ibid.*, Hickey (2016).

13. Kuan-Hsiung Wang, "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea," *Ocean Development and International Law* 41(3) (2010), pp. 237–252, <https://doi.org/10.1080/00908320.2010.499282>.

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21. See Hu, 2013; Smith, 2013; Hickey, 2016.

22. For the PRC's position, see "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea," Ministry of Foreign Affairs, People's Republic of China, July 12, 2016, http://www.fmprc.gov.cn/nanhai/eng/fyrbt_1/t1380374.htm, accessed September 5, 2017.

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Biographical Statements

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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.

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

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



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

Book

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Footnote

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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 paper as one file in the following order: Title, Structured Abstract, Text, Endnotes, Tables and Figures, and Biographical Statement.

Structured Abstract

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

EXAMPLE I

ARTICLE TYPE: RESEARCH PAPER

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.

EXAMPLE II
ARTICLE TYPE: RESEARCH PAPER

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.

Findings: 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.

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