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TERRITORIAL DISPUTES AND STATE SOVEREIGNTY

INTERNATIONAL LAW AND POLITICS

Jorge E. Núñez



Territorial Disputes and State Sovereignty

Adopting a multi-disciplinary approach, this book opens new ground for research on territorial disputes.

Many sovereignty conflicts remain unresolved around the world. Current solutions in law, political science and international relations generally prove problematic to at least one of the agents part of these differences. Arguing that disputes are complex, multi-layered and multi-faceted, this book brings together a global, inter-disciplinary view of territorial disputes. The book reviews the key conceptual elements central to legal and political sciences with regard to territorial disputes: state, sovereignty and self-determination. Looking at some of the current long-standing disputes worldwide, it compares and contrasts the many issues at stake and the potential remedies currently available in order to assess why some territorial disputes remain unresolved. Finally, it offers a set of guidelines for dispute settlement and conflict resolution that current remedies fail to provide.

It will appeal to students and scholars working in international relations, legal theory and jurisprudence, public international law and political science.

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Routledge

Taylor & Francis Group

LONDON AND NEW YORK

First published 2021
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Núñez, Jorge E., author.

Title: Territorial disputes and state sovereignty : international law and politics / Jorge E. Núñez

Description: Abingdon, Oxon ; New York, NY : Routledge, 2021. |

Series: Routledge research in international law | Includes bibliographical references and index.

Identifiers: LCCN 2020008042 (print) | LCCN 2020008043 (ebook) |

ISBN 9780367201388 (hardback) | ISBN 9780429273254 (ebook)

Subjects: LCSH: Boundary disputes. | Sovereignty. | Pacific settlement of international disputes.

Classification: LCC KZ3684 .N86 2020 (print) | LCC KZ3684 (ebook) | DDC 341.4/2--dc23

LC record available at <https://lcn.loc.gov/2020008042>

LC ebook record available at <https://lcn.loc.gov/2020008043>

ISBN: 978-0-367-20138-8 (hbk)

ISBN: 978-0-429-27325-4 (ebk)

Typeset in Galliard
by Taylor & Francis Books

*A Mamá,
Griselda Inocencia Curti
A Papá,
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A mis hermanos,
Emiliano Antonio Obdulio Núñez y Juan Ignacio Núñez*



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Preface

These pages are a continuation of a path that started many years ago in Argentina, carried me to the United Kingdom and is taking me to every corner of the world. They represent the steps I am taking personally and professionally towards finding (or re-discovering) a common ground in what seems to be so divided: our humanity.

Territorial disputes and sovereignty conflicts are the metaphor that represent the relationships most of us experience nowadays with other people and with institutions. Instead of embracing our differences and diversity in order to generate cooperation that can enrich and empower all of us, many still insist on assimilating rather than including the other. Governments, leaders and communities still insist on using territorial disputes and sovereignty conflicts to define and validate their identities and exclude or exterminate whoever is different by annihilating them legally, politically, physically and existentially.

Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹ was the first step both in terms of publishing and presenting my ideas globally. The response to my presentations of Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* to academics, politicians and people at large, and their reception in schools of law, political science, philosophy and other academic and non-academic venues confirmed I was on the right path.

Some problems are never solved because people look for more problems, problems within a problem, just give up or are so self-centred they think that the problem will not affect them or that they may profit from the very existence of that problem. People, irrespective of their country of origin, level of education, religion, ethnicity, language, age, gender or any other factor agree on one of my most basic understandings: some problems are never solved because people will not look for a solution. For a well-placed few, the problem itself offers a higher pay-off than its solution.

1 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* and the pages that follow are my attempt to offer an open platform to discuss the intricacies that initiate and fuel territorial disputes and make them pervasive and seemingly unresolvable. Whether you, the reader, agree with the analysis or the proposed solution is not necessary. Indeed, I find the ultimate achievement in guaranteeing every participant in the discussion an equal footing in return for the discussant's willingness to engage. Because I firmly believe one person alone can only do so much. However, when we work together in positive synergy and cooperation we blossom, we can outperform, we can achieve what we once thought impossible.

Part of what follows repeats part of preface the reader may find in Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. I want to name these people and institutions again.

While writing this book I have been graced once again with the help and comments of many. In a way, this book and its predecessor have already fulfilled my original intention since I have witnessed discussions around the world and I am forever indebted to the participants. Without singling out individuals, I want to express my gratitude to the staff, members and students of the Universidad Nacional de La Plata and Colegio de Abogados de La Plata, both in Argentina; the many universities in the United Kingdom in which I delivered presentations and participated in discussions (Manchester, Liverpool, London School of Economics, Edinburgh, Durham); the State University of Saint Petersburg and the State University of Ivanovo, in Russia; the China University of Political Science and Law in Beijing; Bilkent University in Turkey; ATINER in Athens, Greece; Yale University in the United States of America; Universidad Nacional de México; the Ho Chi Min Academy of Politics in Hanoi, Vietnam; and many others.

Many thanks as well to the many reviewers of the original document and the many discussion groups for their insightful comments in Cambridge, Oxford and Edinburgh. My special thanks to the participants in the Juris North discussion group, one of which I am one of the proud founding members and chairs.

Valuable criticism came from legal scholars and philosophers and political scientists and philosophers, through IVR, IVR Argentina, IVR UK, ASAP, ASAP UK and IPSA/AISP.

Many people from the non-scientific community, the world at large, also participated. Thanks for the comments received through emails, Twitter, comments on my blog and face-to-face conversations in Argentina, Colombia, Hungary, Romania, the United Kingdom, the Malvinas/Falkland Islands, Spain, México, Perú, China, Turkey, Russia, the United States of America, Vietnam, Brazil, Nigeria, Gibraltar, Kashmir, Israel and Japan. These pages would have been meaningless without your input, for science and philosophy that have relevance to making a positive impact on people and their lives are, for me, what make these pages worthwhile.

Last but not least, my deepest gratitude goes to Fundação Angelica Goulart (formerly, Fundação Xuxa Meneghel). In their work I see real meaning in what I do.

I donated the royalties I received for the sales of Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* to Fundação Angelica Goulart in Pedra de Guaratiba, Rio de Janeiro, Brazil. Our Fundação works tirelessly to empower children, teenagers and young adults and we would appreciate any help you can offer. Many thanks to Vinicius, Barbara, Elaine, Fred, Milton, Amanda, Simone and all our team for our mutual and ever-growing collaboration.

For up-to-date details about my work, blog entries, social media contributions or our Fundação, visit my webpage <https://drjorge.world>.

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August 2019

Part 1



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1 Territorial disputes in law and politics

Introduction

There are many disputes in which international agents¹ claim exclusive and conflicting sovereign rights over the same territory. These confrontations have a particular feature: their solution seems to require a mutually exclusive and collectively exhaustive relationship between the agents because only one of them will gain acknowledged sovereignty over the territory under dispute, a sovereignty the other must acknowledge. Indeed, sovereignty is an absolute concept: exclusive and not shareable.²

- 1 The broad expression “agents” is intentional to capture the nature of territorial disputes and sovereignty conflicts. It is usually the case that states are involved. However, states can be sovereign *de facto* or *de jure* or both. Moreover, other kinds of “agents” such as pseudo-states, failed-states and even nations sociologically defined but not legally recognized as states, to name a few, are part in many of these disputes.
- 2 For the author’s previous work about sovereignty see Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty. The Modern Era and the Early Legal Positivist Claim,” in: Luca Siliquini-Cinelli, ed., *Legal Positivism in a Global and Transnational Age* (Switzerland: Springer, 2019); Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017); Jorge E. Núñez, “A Solution to the Crimean Crisis: Egalitarian Shared Sovereignty applied to Russia, Ukraine, and Crimea,” *Europe-Asia Studies* (2017); Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty: The Middle Ages,” *International Journal for the Semiotics of Law* 28 (2015): 235–250; Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty: The Early Years,” *International Journal for the Semiotics of Law* 27 (2014): 645–664; Jorge E. Núñez, “Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution,” in: David A. Frenkel, ed., *Selected Issues in Modern Jurisprudence* (Athens: ATINER, 2016); Jorge E. Núñez, “Sovereignty Conflicts as a Distributive Justice Issue: The Egalitarian Shared Sovereignty and a New Mode of Governance for Crimea,” in *Legal Theory: Comprehension of Sovereignty in Russia, Western Europe, and the USA in the Conditions of Globalization* (Ivanovo State University, 2015); Jorge E. Núñez, “Sovereignty Conflicts as a Distributive Justice Issue,” in: David A. Frenkel, ed., *Selected Issues in Public Private Law* (Athens: ATINER, 2015); Jorge Emilio Núñez, “The Origins of Sovereignty in the Hellenic World,” in: David A. Frenkel, ed., *International Law, Conventions and Justice* (Athens: ATINER, 2011). For an extensive analysis of the concept of sovereignty see Harold J. Laski, *The Foundations of*

Contemporary events such as the rise of the Islamic State and the failure and potential dismemberment of states from the Caucasus to the Middle East mean that recognition of sovereignty as a binding legal norm is not static within a nation; but the concept of transferable, shared sovereignty remains a major unresolved topic in international law, international politics and international relations. Events such as the Ukrainian Crisis and Russia's foray into Crimea demonstrate that sovereignty is dynamic and fluid, flowing at times from one country to another by some event of political restructuring within the international community or the shifting sands of geopolitics.

The issues at stake in these disputes are highly complex, with domestic, regional and international components of varying potency. Although these differences are commonly described in legal and political sciences as territorial disputes,³ the nomenclature does not reflect their complexity and makes evident the superficial nature of the assessment.

International relations and legal and political scholarly literature offer potential remedies to solve sovereignty conflicts. These include independence, self-determination and free association. Although these remedies are useful in certain conflicts, they are futile in others. First, the assumptions, concepts and consequences one

Sovereignty and Other Essays (London: George Allen & Unwin Ltd., 1921); F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986); Jens Bartelson, "The Concept of Sovereignty Revisited," *The European Journal of International Law* 17 (2006): 463–474; Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Thomas J. Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996); John Hoffman, *Sovereignty* (Buckingham: Open University Press, 1998); Robert Jackson, ed., *Sovereignty at the Millennium* (Oxford: Blackwell Publishers, 1999); Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999); Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford: Oxford University Press, 1999); Dominik Zaum, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (Oxford: Oxford University Press, 2007); Hent Kalmo and Quentin Skinner, eds., *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge: Cambridge University Press, 2010); and many others.

- 3 Since 2000, the main publications about territorial disputes are Peter Calvert, ed., *Border and Territorial Disputes of the World* (London: John Harper Publishing, 2004); Rongxing Guo, *Territorial Disputes and Conflict Management* (New York: Routledge, 2014); Rongxing Guo, *Territorial Disputes and Resource Management: A Global Handbook* (London: Nova Science Pub. Inc., 2006); S.B. Jeffrey, *Border Wars: Politics and Territorial Disputes* (Webster's Digital Services, 2011); David Murdoch, *Territorial Disputes* (CreateSpace Independent Publishing Platform, 2017); Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017); Marco Pinfari, *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes* (New York: Routledge, 2012); Brendan Plan, *International Law and the Adjudication of Territorial Disputes* (Oxford: Oxford University Press, 2018); Jaroslav Tir, *Redrawing the Map to Promote Peace: Territorial Dispute Management Via Territorial Changes* (Lanham, MD: Lexington Books, 2006); Krista Eileen Wiegand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy and Settlements* (Atlanta: University of Georgia Press, 2011).

discipline may take as self-evident, logically coherent and scientifically binding may be exclusive to that community of experts and not necessarily shared by the broader scientific society or the entities in a sovereignty conflict. Hence, many conflicts remain unresolved and in a legal and political limbo. Second, studies in relation to these disputes and possible remedies for them are limited because they center only on a particular conflict or region.⁴ With this fragmented analysis of territorial disputes (fragmented because of the methodology of the science of reference, and the object of study) outcomes are inevitably of limited significance in theory and in practice.

This monograph aims to fill a major gap in law and political science, and to provide a global and inter-disciplinary study of territorial disputes that can develop general guidelines for dispute settlement and conflict resolution that current remedies fail to offer.

There are two premises underlying this research on territorial disputes and state sovereignty. First, a better understanding of international conflict requires a global and inter-disciplinary assessment. At present, scholarly literature on these differences tends to focus on a conflict, a region or a discipline. Two important consequences of this focus are that territorial disputes are not examined in their full complexity and that elements common to many of these disputes are not identified. This book addresses both these gaps.

The second focus is to define a set of key conceptual elements for the evaluation of territorial disputes in order to integrate findings from many studies and develop more general theories of international law and politics. Theoretical frameworks provide the hermeneutical means to generalize behavior in a clear, cohesive, and concise manner. They also enable subsequent studies to sharpen their focus and identify more clearly variables that may appear to be particular to a certain dispute but in fact have wider application.

This book integrates two approaches to the study of international relations, the modified realist model and case studies, to generate hypotheses about territorial disputes and state sovereignty.⁵ The modified realist model allows the consideration of the simultaneous impact of domestic- and international-level variables. Examination of case studies enables the test of the generated hypotheses. If these approaches to studying international relations can be integrated, the resulting theoretical framework should have considerable power to support better understanding of territorial disputes. At the same time, these theoretical models can be carefully subjected to empirical analysis.

4 The bibliography in legal and political sciences on territorial disputes is either outdated or fragmented. As an example, see Paul K. Huth, *Standing your Ground: Territorial Disputes and International Conflict* (Ann Arbor: The University of Michigan Press, 2001). Huth offers in chapter 1 a comprehensive list of academic literature; but all entries were published before 2000 and are fragmented by discipline and geographical location.

5 For the modified realist model see Paul K. Huth, *Standing your Ground: Territorial Disputes and International Conflict* (Ann Arbor: The University of Michigan Press, 2001).

General structure

This monograph has three parts.

PART ONE questions the current methodology for studying territorial disputes in the legal and political sciences, includes the core argument, and establishes key conceptual elements.

Chapter One, the Introduction, defines the overall goal of this project, the meaning of territorial disputes and the reasons to study them, in order to offer a more integrated approach to theory building for future analysis, discussion and potential resolution of territorial disputes and sovereignty conflicts. There are many reasons for the origin and ongoing nature of these disputes: they are complex (multi-faceted) and although several sciences assess them, these sciences (and people in general) do not apply the same conceptual frame of reference. Therefore, many disagreements have to do with different conceptions, since different departure premises often lead to different conclusions. This chapter exposes the concealed beliefs and unstated assumptions in legal and political sciences with regard to territorial disputes and discusses a renewed vision that could help avoid analytical bias. By neutralizing possible interference from factors that can cause bias and that may lead to a partly unjust, unfair or inaccurate evaluation, analysis focuses on those elements that are pertinent to territorial disputes.

Chapter Two examines the second key element in this project: state. As with territorial disputes, it is a familiar term to many disciplines studying domestic and international affairs. However, these disciplines use the term in various contexts under the assumption it is the same concept when in fact they apply different conceptions to the term in their analysis. As a result, discrepancies in the analysis and evaluation of the same territorial disputes bring about disagreement. This disagreement is superficial, obvious and not relevant to the territorial disputes *per se* but biased by the *a fortiori* conditions of the analysis. In relation to territorial disputes in particular, the chapter introduces, defines and characterizes the state's basic constitutive elements (territory, population, government and law) in legal and political sciences. This and the following chapter demonstrate that the underlying assumption that territorial disputes center on the element "territory" is a misconception.

Chapter Three appraises the concepts of sovereignty and self-determination. Although both are legal and political concepts, sovereignty gives priority to the state whereas self-determination gives pre-eminent place to the people. This chapter demonstrates that there is no such a thing as absolute sovereignty: in all cases sovereignty is limited and, therefore, shareable. Furthermore, self-determination may lead to solutions other than independence. Scholars can use these two insights to assess, and possibly resolve, territorial disputes by shifting preconceived erroneous views. The first part of the chapter demonstrates that sovereign states have factual and normative limitations and that states may cooperate or be at odds with each other. This is an axiological choice and has nothing to do with sovereignty itself. Indeed, states may accept limitations in order to operate together, limiting their sovereignty while still being considered as fully sovereign. These

restrictions in theory and practice may either limit a state's choices or enhance them. Because territorial disputes can be assessed by reference to territory as well as population, the will of the people who live in the space under dispute requires further exploration. At this point, self-determination becomes relevant to territorial disputes. If sovereignty can be shared, territorial disputes can be centered on elements other than territory and self-determination may lead to solutions other than independence, there is room for territorial disputes to be resolved by cooperative approaches.

PART TWO explores the logic behind territorial disputes and their pervasive nature.

Chapter Four considers how and why territorial disputes start, and why some continue endlessly while others reach a solution. Although relevant, the usually-assumed causes for these differences, such as the strategic location of a territory, its economic value, homogeneity with bordering minorities or a desire for political unification, fail to provide a satisfactory and comprehensive explanation. The chapter examines how domestic context influences the regional and international dimensions, and vice-versa. The hypothesis is that state leaders will take into consideration both external elements related to the regional and international dimensions pertinent to territorial disputes and the internal situation because it links directly to their domestic political prestige.

Some territorial disputes escalate into conflict. This happens when the claiming state threatens or resorts to coercion (political, military, financial, etc.) to obtain sovereignty over the disputed territory. The chapter argues that, while international elements may explain the escalation into conflict, they do not necessarily explain the origins of the disputes. Conversely, local and regional elements that give birth to these disputes are not sufficient conditions for their escalation. Empirical data supports these claims.

Chapter Five discusses the main remedies applied at the international level to territorial disputes and why these alternatives are not the solution to some well-known and long-standing differences. The chapter finishes by introducing egalitarian-shared sovereignty as a means to deal with such disputes.⁶

PART THREE considers some current, well-known, and long-standing territorial disputes, divided by regions.

Chapter Six introduces and explores controversial cases in the Americas to demonstrate why these territorial disputes seem to continue endlessly without resolution. The analysis shows how territorial disputes have a multi-faceted and multi-layered nature that includes law, politics, nationalism, national identity, natural resources, prestige and many other elements and issues with domestic, regional and international dimensions. The differences between Peru and Ecuador, Colombia and Nicaragua, Costa Rica and Nicaragua, Mexico and the United States, and some others demonstrate that most of the territorial disputes in the

6 Egalitarian-shared sovereignty is the model developed in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017).

Americas date back to colonial times and the way that former colonial powers divided territory that was once sociologically integrated. These conflicts demonstrate that, although the claiming parties may achieve a settlement, domestic, regional and international issues at stake may still make the situation become volatile, and that regional guarantors are key in peacekeeping.

Chapter Seven evaluates ongoing disputes in Europe and Asia. The chapter has two main sections: the first one looks at cases that involve two ethnic or national groups living in the same territory, neither of which wants to belong to a state dominated by the other (the cases of Crimea, Gibraltar, Cyprus and Northern Ireland illustrate this segment). The section introduces, compares, contrasts and appraises domestic, regional and international issues at stake, such as geopolitical importance, nationalism, national identity, territorial integrity and historical entitlement. The second section centers on geostrategic location locally, regionally and globally, with a focus on the cases of Kashmir and the South China Sea. This section pays particular attention to an often-overlooked element: the major role that non-regional parties and their interests play in the origin, continuation and potential escalation of territorial disputes into conflict.

Chapter Eight examines current disputes in Africa and the Middle East. The first section demonstrates that current territorial disputes and sovereignty conflicts in Africa have colonial roots. As in the Americas, former colonial powers artificially divided what used to be sociologically homogeneous territories. The assessment shows how European understanding in legal and political sciences is not appropriate to comprehending the complexity of these realities. The last section assesses the Arab-Israeli conflict. The analysis evaluates domestic, regional and international issues at stake, with particular focus on the influence of religion, geopolitical importance and leaders' prestige.

Chapter Nine brings together the main points of this monograph, highlights their explanatory importance in law and political science and points to possible further implications. The value of these implications is twofold: highlighting the many connections at the theoretical level that different territorial disputes present and establishing some guidelines for policymaking.

Aims/rationale

A territorial dispute, in simple terms, is a disagreement about "who owns a territory." Yet it is not that simple. In international relations, "territorial dispute" describes a disagreement between at least two parties about which is the sovereign over a territory. Currently, the most well-known territorial disputes are over the control of Jerusalem, Kashmir, Gibraltar, Crimea and the Falkland/Malvinas Islands. Yet there are many more.

The traditional academic literature in legal and political sciences focuses on one element to define such disputes: territory. The phrase "territorial dispute" does not do justice to the multi-level and highly complex nature of these differences. Instead, the phrase reveals the narrow analysis in these sciences in relation to territorial disputes. There are two basic components for this partial view and the

incomplete analysis it generates: the claims, assumptions or beliefs behind these studies; and the lack of an inter-disciplinary and comprehensive evaluation.

Some have gone beyond territory and attempted to include other elements.⁷ There are claims that the usual reasons most governments use to support territorial disputes have to do with their domestic agenda (for example, human rights, leader's prestige, distracting from internal issues by identifying an external foe). Others assume that most of these disputes center on natural resources. Yet others believe they have to do with religious, cultural and/or ethnic elements. Because of these narrow claims, assumptions or beliefs, many territorial disputes spend years or decades in legal and political limbo with many negative consequences domestically, regionally and internationally (for example, arms trafficking, terrorism, violations of human rights, tax evasion and war). Territorial disputes are multi-level and multi-faceted.

The literature pertaining to territorial disputes is prolific in at least two ways. There are scholars in legal and political sciences who explore to different depths the same differences.⁸ There are also publications around the globe that focus on a particular conflict or region, geographically, historically or sociologically defined.⁹ Interestingly (and surprisingly), there is not a single scholarly publication that tackles analysis of regional conflicts using a global and inter-disciplinary approach.

7 For the most current studies on territorial disputes see fn. 3. For a comprehensive list of historical and ongoing territorial disputes see Ewan Anderson, *An Atlas of World Political Flashpoints* (London: Pinter Publishers, 1993); Robert Butterworth, *Managing Interstate Conflict, 1945–74: Data with Synopses* (Pittsburgh: University Center for International Studies, University of Pittsburgh, 1976); Central Intelligence Agency, *The World Factbook* (Washington, DC: Government Printing Office, ongoing); *International Boundary Study* (Washington, DC: *The Geographer*, Bureau of Intelligence and Research, Department of State, ongoing); David Munro and Alan Day, *A World Record of Major Conflict Areas* (London: Edward Arnold, 1990); *Yearbook of the United Nations* (New York, United Nations, ongoing). For particular elements about territorial disputes see Michael Brecher *et al.*, *Crises in the Twentieth Century*, vol. 1 (New York: Pergamon Press, 1988); Patrick Brogan, *The Fighting Never Stopped* (New York: Vintage Books, 1990); Alan James, *Peacekeeping in International Politics* (London: International Institute for Strategic Studies, 1990); Arie Kacowicz, *Peaceful Territorial Change* (Columbia: University of South Carolina Press, 1994); Avery Kolers, *Land, Conflict, and Justice. A Political Theory of Territory* (Cambridge: Cambridge University Press, 2011); Friederich Kratochwil *et al.*, *Peace and Disputes Sovereignty: Reflections on Conflict over Territory* (Lanham, MD: University Press of America, 1985); Marco Pinfari, *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes* (New York: Routledge, 2012); Alan Day, ed., *Border and Territorial Disputes* (London: Longman, 1987); David Downing, *An Atlas of Territorial Border Disputes* (London: New English Library, 1980); Carl Grundy-Warr, ed., *International Boundaries and Boundary Conflict Resolution* (Durham: International Boundaries Research Unit, University of Durham, 1990); John Allock *et al.*, *Border and Territorial Disputes* (London: Longman, 1992); J.R.V. Prescott, *Political Frontiers and Boundaries* (Boston: Allen & Unwin, 1987); Surya Sharma, *International Boundary Disputes and International Law* (Bombay: N.M. Tripathi, 1976); Herbert Tillema, *International Armed Conflict since 1945* (Boulder: Westview Press, 1991); *Yearbook of the United Nations* (New York, United Nations, ongoing).

8 See chapters 6, 7 and 8 for further details and bibliographies.

9 *Ibid.*

The current literature about territorial disputes is fragmented. An immediate and evident outcome is that sciences do not work collaboratively and, in consequence, their results are limited by their own methodology (lack of inter-disciplinary evaluation). Furthermore, when there is an attempt to assess disputes in an inter-disciplinary manner, participants limit themselves to a particular conflict or a particular region.

This monograph brings together a global view of territorial disputes and an inter-disciplinary assessment. The global view examines some of the most controversial territorial disputes to work outward from their particularities toward generalizing the issues at stake behind the conflicts. The inter-disciplinary assessment combines legal and political sciences under a basic rule of communication: clarity, cohesiveness and conciseness. If participants agree on the key conceptual elements, the same methodology can apply to different territorial disputes with the aim of allowing better understanding of these differences, the reasons they began and why they continue. The monograph offers a set of guidelines for dispute settlement and conflict resolution that current remedies fail to provide.

The rationale is simple yet potentially of very high impact. Many territorial disputes remain unresolved around the world. Current solutions in law, political science and international relations always prove to be problematic to at least one of the participants in these conflicts and are, consequently, not viable.

The key aims in this book are:

- To establish key conceptual elements related to territorial disputes that are central to the legal and political sciences: state, sovereignty and self-determination.
- To compare and contrast the many issues at stake in territorial disputes and the potential remedies currently available.
- To assess why some territorial disputes remain unresolved.
- To identify in theory the elements all territorial disputes have in common when they start and as they continue, and why a party may seek and comply with a settlement.
- To establish some guidelines for policymaking in dispute settlement and conflict resolution.

Methodology

Definition of “territorial dispute”

A dispute is a disagreement about facts, law or policy between at least two parties in which the claim of one party is counter-claimed, ignored or rejected by another. In the international arena, the parties may be legal or natural persons such as states or communities. The present work focuses on a particular kind of international dispute: territorial disputes. Specifically, a territorial

dispute means here a disagreement between states about the sovereignty over territory (land or water).

The international scene presents several sovereignty conflicts of very different types: Falkland/Malvinas Islands (Argentina and the United Kingdom), Jerusalem and other surrounding areas (Israel and Palestine), Gibraltar (Spain and the United Kingdom), Kashmir (India and Pakistan), the South China Sea (several parties), Cyprus (Greek Cyprus and the Turkish Republic of North Cyprus), Transnistria (Trans-Dniester or Transdniestria and Moldova), the Persian Gulf (several parties), Quebec (Quebec and the rest of Canada), Kuril islands (Japan and Russia), Tibet (and China), Hong Kong (and China), Northern Ireland (the Republic of Ireland and the United Kingdom), South Ossetia (and Georgia), Abkhazia (and Georgia), and Nagorno-Karabakh (and Azerbaijan).

Although each dispute is interesting in its own way, to offer an in-depth coverage this research introduces simplifying assumptions. Conflicts which address not only sovereignty over a disputed territory but also basic notions such as statehood are left aside. Limiting the scope of this monograph makes it more useful to analyze in depth international differences in which the basic elements that form state sovereignty are settled rather than to make a comprehensive and necessarily shallow study of cases in very different stages. The conclusions may still apply to a wide range of conflicts by means of analogy.

A clarification should be made at this point to define the object of this project.¹⁰

Although these cases have a sovereignty issue in common they have their own peculiarities:

- a Some states are fully sovereign both *de jure* and *de facto* (Argentina, the United Kingdom, China, etc.).
- b Some states are only *de facto* sovereign (Palestine, which has only partial local autonomy, the Turkish Republic of North Cyprus, etc.).
- c Others have already solved the conflicts or are approaching an integration process into a larger legal order (Hong Kong, Northern Ireland, etc.).
- d A few cases are difficult to define as belonging to any of the previous categories. They possess most of the elements that could potentially grant their statehood but there is no likelihood that this will happen (e.g. Tibet).

This book focuses only on differences involving two or more fully sovereign states (both *de jure* and *de facto*) over disputed territory in land or water. That is not to say the analysis will not generalize to other disputes. Although practical reasons make it impossible to include every single sovereignty conflict in the

10 The author follows the approach used in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017).

12 *Territorial disputes in law and politics*

analysis, the principles may be generalized in order to be applicable to cases left aside or simply not considered here.

Choice of cases

The monograph explores some actual territorial disputes. These disputes fulfill the criteria defined above: two or more sovereign states and a disputed territory. The situations may be:

- a A territorial dispute in which two or more states disagree about the location of the borders. Two cases may be differentiated:
 - 1 There is a disagreement about the legal border between two or more sovereign states. The claiming party does not challenge the existence of a border, but its location. The parties have opposing interpretations of the border's legal definition (e.g. South China Sea, Ecuador-Peru border, Venezuela-Guyana border).
 - 2 There is no legal document establishing the legal border (e.g. the Persian Gulf).
- b A territorial dispute in which two or more states disagree about sovereignty over a territory and therefore, a state challenges another state's claim of sovereignty. Two cases may be differentiated:
 - 1 A state occupies *de facto* the sovereign territory of another state. The location of the border is legally defined. The party whose territory is being occupied desires the other state to withdraw from its sovereign territory in order to re-establish complete *de jure* and *de facto* sovereignty (e.g. the Golan Heights, Guantanamo Bay, Gibraltar).
 - 2 A state does not recognize the sovereignty of another state over a territory within its borders. There is no *de facto* occupation (e.g. Kashmir).

The cases chosen for the study are active territorial disputes based on the criteria detailed above (two or more sovereign states having competing claims over the same territory in land or water). Since these disputes or conflicts have the elements essential to the theoretical framework, the conclusions will be fully applicable to similar cases.

Because this monograph is aimed at a global audience, the selection of the cases is based on continental location. The specific cases serve to illustrate an overarching theme in the region of reference. For example, cases in the Americas provide evidence of the sociological component and colonial-era roots of territorial disputes. Europe and Asia exemplify why geostrategic location may be the reason behind disputes over territories and how claimant states use the sociological component to justify internally and internationally their supposedly unresolvable nature. Africa and the Middle East present what on the surface seem to be differences based on religion, cultural and ethnic diversity, but, in reality, have historical roots in decisions made outside these regions by colonial parties from Europe with little regard for internal negative outcomes.

Conclusion

This chapter introduced the reader to the core elements of this monograph and its overall structure. The impetus for writing this book is the ongoing and pervasive nature of territorial disputes and sovereignty conflicts, their multi-layered nature and the lack of common scientific ground to assess them and, therefore, to find ways of solving them. Second, the hybrid methodology incorporates the modified realist model and case studies. Third, the conceptual components of this work are territorial disputes, state, sovereignty and self-determination. Finally, this chapter established the book's aim to understand the dynamics of territorial disputes and to contribute to international law and politics by developing a more integrated approach to theory building.

The next two chapters present and assess the main conceptual elements that have to do with any territorial dispute. Chapter Two addresses the concept of state and its main components: territory, population, government and law. The chapter incorporates the concepts of sovereignty and self-determination. The objective of each chapter and of part one as a whole is to set a common conceptual ground-work in legal and political sciences and international relations that supports the analysis in the rest of the monograph. The result of part one will be establishing a set of agreed concepts for future analysis of territorial disputes in order to neutralize the different conceptions these concepts have because of the science of reference. By neutralizing any possible interference in the evaluation of territorial disputes by factors that can cause bias and that may lead to a partly unjust, unfair or inaccurate evaluation, it is possible to focus on those elements that are pertinent to territorial disputes.

Bibliography

- Allock, John et al. *Border and Territorial Disputes*. London: Longman, 1992.
- Anderson, Ewan. *An Atlas of World Political Flashpoints*. London: Pinter Publishers, 1993.
- Bartelson, Jens. "The Concept of Sovereignty Revisited." *The European Journal of International Law* 17 (2006): 463–474.
- Bartelson, Jens. *A Genealogy of Sovereignty*. Cambridge: Cambridge University Press, 1995.
- Biersteker, Thomas J. and Weber, Cynthia, eds. *State Sovereignty as Social Construct*. Cambridge: Cambridge University Press, 1996.
- Brecher, Michael et al. *Crises in the Twentieth Century*. New York: Pergamon Press, 1988.
- Brogan, Patrick. *The Fighting Never Stopped*. New York: Vintage Books, 1990.
- Butterworth, Robert. *Managing Interstate Conflict, 1945–74: Data with Synopses*. Pittsburgh: University Center for International Studies, University of Pittsburgh, 1976.
- Calvert, Peter, ed. *Border and Territorial Disputes of the World*. London: John Harper Publishing, 2004.
- Central Intelligence Agency. *The World Factbook*. Washington, DC: Government Printing Office, ongoing.
- Day, Alan, ed. *Border and Territorial Disputes*. London: Longman, 1987.
- Downing, David. *An Atlas of Territorial Border Disputes*. London: New English Library, 1980.

- Grundy-Warr, Carl, ed. *International Boundaries and Boundary Conflict Resolution*. Durham: International Boundaries Research Unit, University of Durham, 1990.
- Guo, Rongxing. *Territorial Disputes and Conflict Management*. New York: Routledge, 2014.
- Guo, Rongxing. *Territorial Disputes and Resource Management: A Global Handbook*. London: Nova Science Pub. Inc., 2006.
- Hinsley, F. H. *Sovereignty*. Cambridge: Cambridge University Press, 1986.
- Hoffman, John. *Sovereignty*. Buckingham: Open University Press, 1998.
- Huth, Paul K. *Standing your Ground. Territorial Disputes and International Conflict*. Ann Arbor: The University of Michigan Press, 2001.
- International Boundary Study. Washington, DC: The Geographer, Bureau of Intelligence and Research, Department of State, ongoing.
- Jackson, Robert, ed. *Sovereignty at the Millennium*. Oxford: Blackwell Publishers, 1999.
- James, Alan. *Peacekeeping in International Politics*. London: International Institute for Strategic Studies, 1990.
- Jeffrey, S. B. *Border Wars: Politics and Territorial Disputes*. Webster's Digital Services, 2011.
- Kacowicz, Arie. *Peaceful Territorial Change*. Columbia: University of South Carolina Press, 1994.
- Kalmo, Hent and Skinner, Quentin, eds. *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*. Cambridge: Cambridge University Press, 2010.
- Kolers, Avery. *Land, Conflict, and Justice: A Political Theory of Territory*. Cambridge: Cambridge University Press, 2011.
- Krasner, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press, 1999.
- Kratochwil, Friederich et al. *Peace and Disputes Sovereignty: Reflections on Conflict over Territory*. Lanham, MD: University Press of America, 1985.
- Laski, Harold J. *The Foundations of Sovereignty and Other Essays*. London: George Allen & Unwin Ltd., 1921.
- MacCormick, Neil. *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. Oxford: Oxford University Press, 1999.
- Munro, David and Day, Alan. *A World Record of Major Conflict Areas*. London: Edward Arnold, 1990.
- Murdoch, David. *Territorial Disputes*. CreateSpace Independent Publishing Platform, 2017.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty. The Modern Era and the Early Legal Positivist Claim." In *Legal Positivism in a Global and Transnational Age*, Luca Siliquini, ed., 47–64. Switzerland: Springer, 2019.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor & Francis Group, 2017.
- Núñez, Jorge E. "A Solution to the Crimean Crisis: Egalitarian Shared Sovereignty applied to Russia, Ukraine, and Crimea." *Europe-Asia Studies* (2017): 1163–1183.
- Núñez, Jorge E. "Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution." In *Selected Issues in Modern Jurisprudence*, David A. Frenkel, ed., 191–208. Athens: ATINER, 2016.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Middle Ages." *International Journal for the Semiotics of Law* 28 (2015): 235–250.
- Núñez, Jorge E. "Sovereignty Conflicts as a Distributive Justice Issue: The Egalitarian Shared Sovereignty and a New Mode of Governance for Crimea." In *Legal Theory:*

- Comprehension of Sovereignty in Russia, Western Europe, and the USA in the Conditions of Globalization*, 202–281. Ivanovo: Ivanovo State University, 2015.
- Núñez, Jorge E. “Sovereignty Conflicts as a Distributive Justice Issue.” In *Selected Issues in Public Private Law*, David A. Frenkel, ed., 125–138. Athens: ATINER, 2015.
- Núñez, Jorge E. “About the Impossibility of Absolute State Sovereignty: The Early Years.” *International Journal for the Semiotics of Law* 27 (2014): 645–664.
- Núñez, Jorge Emilio. “The Origins of Sovereignty in the Hellenic World.” In *International Law, Conventions and Justice*, David A. Frenkel, ed., 13–26. Athens: ATINER, 2011.
- Pinfari, Marco. *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes*. New York: Routledge, 2012.
- Plan, Brendan. *International Law and the Adjudication of Territorial Disputes*. Oxford: Oxford University Press, 2018.
- Prescott, J. R. V. *Political Frontiers and Boundaries*. Boston: Allen & Unwin, 1987.
- Sharma, Surya. *International Boundary Disputes and International Law*. Bombay: N.M. Tripathi, 1976.
- Tillema, Herbert. *International Armed Conflict since 1945*. Boulder: Westview Press, 1991.
- Tir, Jaroslav. *Redrawing the Map to Promote Peace: Territorial Dispute Management Via Territorial Changes*. Lanham, MD: Lexington Books, 2006.
- Wiegand, Krista Eileen. *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy and Settlements*. Atlanta: University of Georgia Press, 2011.
- Yearbook of the United Nations*. New York: United Nations, ongoing.
- Zaum, Dominik. *The Sovereignty Paradox: The Norms and Politics of International State-building*. Oxford: Oxford University Press, 2007.

2 State

Introduction

The concept of “state,” like “territorial disputes,” is a familiar term to many sciences that deal with domestic, regional and international affairs. However, these disciplines use the term in various contexts under the assumption it is the same concept when in fact they assume different conceptions in their analysis. As a result, discrepancies in analysis and evaluation of the same territorial disputes lead to disagreement. This disagreement is not relevant to the territorial disputes *per se* but caused by the *a fortiori* conditions for the conflicting analyses. In relation to territorial disputes in particular, this chapter introduces, defines and characterizes the state’s basic constitutive elements (territory, population, government and law) in legal and political sciences. The underlying assumption that territorial disputes center on the element “territory” is a misconception, as this and the following chapter show.

The concept of “state”

To better understand what a territorial dispute is, there are two inter-twined concepts in the vocabulary of law, politics and international relations: state and sovereignty. That is because in all territorial disputes there is at least one state claiming exclusive sovereignty over a territory.

Broadly defined, a state is a political community with a certain degree of power or authority. A classical notion would add the fact that the political community is territorially characterized. Depending on the aspect or element on which the analysis centers, the definition of the state focuses on the political status, the community that constitutes its subjective element, the territory where the state is active or has a claim on the legal bond that brings cohesion to the whole and/or differentiates this whole from other political communities regionally or internationally. As a direct consequence, depending on the science of reference, the conception of the state will be different.

Humans have formed communities for millennia. Arguably, the first indication of the modern state comes, in the Western world at least, with the Greek *polis*. However, different from the modern idea of a state, in Ancient Greece the polis

was not territorially defined. The same way of understanding the state continues in the Middle Ages with kings and the Church fighting over power. Territorial boundaries were highly volatile at the time. It is in the Modern era that political communities find themselves defined and limited by territory.

A legal definition of the state will refer to the legal person, the group of legal norms (rules) that are binding domestically, regionally and internationally on a population that lives in a given territory. In that sense, law and state inter-define each other. A state is a determinate center of normative imputation. From there, the population that forms the state and the territory in which the state takes place are legally defined by these rules.

In turn, in political science, the definition of state may have to do with a community of people with certain characteristics that gives them a common element—e.g. ethnicity, language, history, culture—who may live in the same territory and who may be under the same civil authorities. Focusing on the subjective element that integrates a state—its population—political science identifies states that are liberal, Marxist, anarchist, fascist and so on.

International relations may take one or the other stance (based on legal or political sciences) or, in fact, any other, such as defining the state sociologically as a nation-state. In any case, international relations give pre-eminence to the external facet. In other words, international relations will have to do with the inter-relations of, for example, territorially defined political communities.

A political scientist may argue whether the state in question is liberal or conservative, fascist or democratic, and so on while a legal scholar may give little to no consideration to this understanding. For this reason, legal scholars have been able to justify “undemocratic” states or states that violate human rights. They only center their analysis and, therefore, the justification of the existence of that state on the objective element that is the set of rules.

In the current state of affairs domestically, regionally and internationally, legal and political sciences and international relations may evaluate the same agents that are part of any territorial disputes. Each of these disciplines have their own methodology, and specific theoretical and experiential tools for analysis. However, in order to have a complete understanding of any state that is a participant in any territorial dispute, these disciplines ought to share the same point of departure.

The next section explores a basic and internationally agreed definition of state and deconstructs each of its elements into smaller components in order to assess their relevance in legal and political sciences and international relations. The goal is to reach a common ground from which to characterize a state and its necessary components.¹ This is of crucial importance. By way of example, for a legal scientist law must be included in the definition of state. Therefore, law is a necessary

1 “Necessary” refers to the distinction between necessary and sufficient conditions. Necessary conditions are elements or components in theory or in practice that *must* be present in order to have a whole. Sufficient conditions are elements or components in theory or practice that are enough to constitute a whole.

condition for a state to exist.² However, for a political scientist, as long as some sufficient conditions such as population and territory are present, law may be a desirable but not necessary element.³

State and its elements

International public law offers a definition in article 1 of the Montevideo Convention of Rights and Duties of States (1933) that declares: “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”⁴

In addition to and in tune with the legal definition of state, a broad concept indicates that “[t]o qualify as a state the entity must have: (1) a permanent population [...]; (2) a defined territory [...]; (3) an effective government.”⁵

Political science also defines state in various manners. Some scholars center the definition on the use of force. Others consider that the state is the realization of morality. Yet another group has a hybrid understanding by combining force and morality.⁶

From the above notions and definitions, the state has in principle three key elements: territory, population and government (or government and law).⁷ In very simple terms, that means that, in principle, territories without people, such as Antarctica, cannot be states; that people without territory, such as exiled Tibetans, cannot be a state; and that a group of people living in a territory without a government and independent from any other source of law, such as Catalonia, cannot be a state.

These three elements (territory, population and government) require one specific characteristic that brings internal and external cohesion to the whole. The

2 See the “purely legalist theory of the state” below.

3 There are many states in the world that are classified as “lawless.” See the World Justice Project for more detail at <https://worldjusticeproject.org/our-work/wjp-rule-law-index> accessed 08/May/2019.

4 Complete text available from the United Nations Treaty Collection at <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166acf> accessed 08/May/2019.

5 Elizabeth A. Martin and Jonathan Law, ed., *A Dictionary of Law* (Oxford: Oxford University Press, 2006).

6 For a more detailed understanding of these views see John Hoffman and Paul Graham, *Introduction to Political Theory* (Oxon and New York: Routledge, 2015), Chapter 1.

7 For a view of state as composed by population, territory, government and law see Alan James, *Sovereign Statehood: the Basis of International Society* (London: Allen & Unwin, 1986), in particular Chapter 2; John A. Hall and G. John Ikenberry, *The State* (Milton Keynes: Open University Press, 1989); Patrick Dunleavy and Brendan O’Leary, *Theories of the State: the Politics of Liberal Democracy* (London: Macmillan, 1987); Malcom D. Evans, *International Law* (Oxford: Oxford University Press, 2010); Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2001); Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 2008); and many others.

political community based on a territory needs to have sovereignty in order to be a state in legal and political sciences and international relations.⁸

A current and comprehensive definition of sovereignty indicates:

[Sovereignty is] a Supreme authority in a state. In any state sovereignty is vested in the institution, person, or body having the ultimate authority to impose law on everyone else in the state and the power to alter any pre-existing law. [...] In international law, it is an essential aspect of sovereignty that all states should have supreme control over their internal affairs [...] ⁹

Bringing the two concepts of state and sovereignty together, a sovereign state refers to a group of people (population) who live in a space of land, water, etc. (territory) and have a common government that can exclusively create the highest law for them in that territory. By implication, there is a territorial dispute when more than one government (or group of people) aims to have exclusive sovereignty over the same territory.

In simple terms, a state has the following elements: population, territory, government (or government and law). Although population, territory, government (or government and law) are the essential components¹⁰, there are sub-elements that characterize any state: currency, market, defense, language, religion, etc. Indeed, state is a multi-layered and multi-faceted concept.

For clarity in the exposition, the paragraphs below review each key component individually, and a sample of sub-elements that integrate each key component.

Population

The people that are the nation, the subjective element of the state. From the legal science's point of reference, this element may refer to its normative existence. The population of a state is determined by its law—e.g. the distinction between national citizens and foreigners and their respective legal rights and obligations. Worldwide, there are different legal principles that determine when an individual may be part of a given population—i.e. *jus sanguinis* or right of blood, *jus soli* or birthplace or residence.¹¹ The distinction between nationality and citizenship applies here.¹² Political science, in turn, may offer a broader interpretation of the

8 Chapter 3 assesses the concept of sovereignty in detail.

9 Elizabeth A. Martin and Jonathan Law, ed., *A Dictionary of Law* (Oxford: Oxford University Press, 2006).

10 The expressions “necessary” and “essential” are interchangeable here. See Robert Alexy, “On the Concept and the Nature of Law,” *Ratio Juris* 21:3 (2008): 281–299.

11 See T. Alexander Aleinikoff and Douglas Klusmeyer, eds., *Citizenship Today. Global Perspectives and Practices* (Washington, D.C.: Carnegie Endowment for International Peace, 2001), in particular chapter 1 in which the author compares several national legal orders.

12 European Union law clearly distinguishes between citizenship and nationality. See, for example, art. 20 Treaty on the Functioning of the European Union in which citizenship has to do with the European Union while nationality is determined by each individual Member State. For more detail see Klaus Eder and Bernard Giesen, eds.,

same term by using it to indicate all the inhabitants of a particular territory—e.g. a democratic state secures the same basic human rights to all the inhabitants within its borders regardless of their legal status as nationals or foreigners.

Some sub-elements that integrate any population in law and realpolitik may be necessary or sufficient in order to characterize a state from its subjective angle.¹³ Many questions arise: for instance, is it necessary for a state to have people from the same ethnic origin, professing the same religion or speaking the same language? The following paragraphs evaluate a sample of these sub-elements to assess their necessity or sufficiency.

Language

It is reasonable to maintain that having only one language is not a necessary requisite for a group of people to be a nation or a state defined from its subjective component. There are several cases in which, although the state has one official language, its inhabitants speak others (Argentina's official language is Spanish but the Welsh community in Patagonia learns both Spanish and Welsh throughout their primary and secondary education). Moreover, there are several states around the globe with more than one official language (South Africa, Montenegro, Israel, India, Peru, and the United Kingdom, to name a few).

Ethnicity

An ethnic group refers to people who identify themselves with each other through a common background or heritage (real or assumed) that may include a common language, culture, religion, race, etc. As religion and language are reviewed separately, the focus here is on culture and race when dealing with ethnicity.

To have a particular ethnic background (to be white, black or mixed) is not a necessary condition to be part of a population as legally defined. Similarly, realpolitik refers indistinctly to individuals of different cultural origins. Both white Americans and Afro-Americans should have the same expectations of opportunities in a democratic society. Currently, most (if not all) states have a population integrated by individuals from various races and many different cultural backgrounds. Cosmopolitan societies are a widespread reality. States such as the United Kingdom, Mexico and Russia are examples of mixed societies in terms of ethnicity and culture. A common ethnicity is not a necessary condition to define a state.

Religion

Some states, such as Argentina, Monaco and the Vatican City (Roman Catholic); Iceland and Denmark (Lutheran); the United Kingdom (Anglican) and Pakistan

European Citizenship between National Legacies and Postnational Projects (Oxford: Oxford University Press, 2003), in particular chapter 2.

13 The term "subjective" refers here to "subjects" or individuals.

(Islam) have an official religion. Other states style themselves as secular, without any official state religion: Bolivia, France, the United States, etc. Furthermore, those states that have an official religion usually recognize at the constitutional level and in laws the concept of freedom of religion: although they may have an official religion, their inhabitants are able to profess the beliefs of their choice.

In sum, individuals who are part of the population of a certain state may have diverse beliefs, ethnic backgrounds, languages, etc. but are still able to be a nation and, therefore, constitute the subjective element of any state. National law may include restrictions or conditions in order to be legally part of a certain population—i.e. *jus sanguinis* or right of blood, place of birth or residence. Political science may have a broader account of the same term. In any case, both legal and political sciences refer to individuals as part of a community and to that community as a whole when they define the state. Whether the definition of the state includes any of these sub-elements (or any other) that integrate any population is an hermeneutical and methodological choice that has to do with the science of reference and not the population under analysis.

Territory

An area owned and possessed by the population (in land, water or outer and, arguably, cyber-space).¹⁴

On the one hand, legal science centers attention on the norms that define the territory in relation to other international agents (mainly, other states). A normative approach defines the territory of any state by reference to law through national and international norms (national constitutions, bilateral and multilateral treaties, conventions, etc.). Other concepts apply directly such as territorial integrity and non-interference or non-intervention. Territory remains a necessary condition for any population to claim its status and be recognized as a state. The Tibetan situation is a leading example: “Whilst less functionally operational than a territorial nation-state, the Tibetan community-in-exile is far more institutionally organized than any socially networked diasporic community.... However, as [the Tibetan Government in exile] remains internationally unrecognized and lacks jurisdiction over territory in both Tibet and exile, this polity faces significant barriers to fulfilling the conventional remit of statehood.”¹⁵

On the other hand, political studies, for example political philosophy, center analysis on the relationship between state and citizen (rights and duties, represented and representative), leaving questions about territory unaddressed.¹⁶

14 The monograph does not discuss whether cyberspace should or not be considered as part of the sovereignty of a state. For a view on this topic see Patrick W. Franzese, “Sovereignty in Cyberspace: Can it Exist?,” *Air Force Law Review* 64 (2009): 1–42.

15 Fiona McConnell, “De Facto, Displaced, Tacit: The Sovereign Articulations of the Tibetan Government-in-Exile,” *Political Geography* 28 (2009): 343–352.

16 Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015), chapter 1.

Although at first glance territory seems a simple concept to define and characterize, it includes many sub-elements. To name only a few:

Natural resources

Natural resources are any material in raw condition, organic or mineral, present in the territory that is not initially a product of any kind of human activity. Some states are rich in natural resources; others are not. No particular amount of natural resources defines a state. However, the distribution of natural resources is usually one of the main problems when dealing with territorial disputes even though the involved sovereign states may already be wealthy ones. It is a feature that always presents controversy. Furthermore, the controversy is not limited to resource ownership and use but includes exploration and exploitation. In particular, exploration and exploitation are problematic issues when there is a territorial dispute. Kashmir, the South China Sea and the Falkland/Malvinas Islands are a few current examples of the tension that exists between the claiming agents when their counterpart in the dispute conducts any of these activities.

Defense

National defense or security means the protection of the interests a state has (its possessions, territory, population, etc.). It may be that the main interest protected is that of the wellbeing of the population. Nevertheless, the national leader's prestige plays an important role in the decision-making process related to the use of force in territorial disputes. Furthermore, defense may refer to the use of force—e.g. the army and the navy participating in a legal or illegal reprisal or even war—but may also include other means such as economic blockades, diplomatic and politic boycotts, etc.

The international scenario offers a wide range of realities, from large states with highly developed military power (United States) or almost none (Argentina) to small or medium-sized states in terms of their territorial extension with a well-equipped and trained army and navy (United Kingdom) or non-existent ones (Andorra or the Vatican City).

Although it may seem desirable for a state to have its own means of defense (particularly military) reality shows it is not a necessary requisite. There are several cases in which the army and navy are not big, well equipped or sufficiently trained to defend the state's territory or population but they are still respected as states. Even more, there are other states that in fact have no military defense means; often their defense is the responsibility of another country or an international organization such as NATO.

The section dedicated to government discusses the economic and diplomatic angles.

Extension

From the Vatican City or Montenegro to Australia or Russia, the world has a spectrum of states in terms of the size of their territory. Exceeding some minimum

size is not a prerequisite that could be considered necessary in order to constitute a state. Similarly, and directly linked to the issue about natural resources, it is self-evident that there are many large states in terms of territorial extension which are rich in natural resources but have an uneven level of development. Many Latin American and Asian states are large and rich in natural resources but their level of development is minute in comparison to their smaller and resource-challenged European peers.¹⁷

Since this project does not deal with development or fairness in the distribution of wealth it will suffice by now to agree that the territorial extension is not a necessary condition for a state to exist.

Government

Broadly, a person, group of people or body that (in democratic societies, at least) represents the will of the population. This sub-section discusses whether the different ways government may appear and that diverse persons may be considered representatives could affect in any way the existence of a state. Thereafter, the attention will be on the effectiveness of what these representatives can do and any possible diplomatic and economic limits to their actions.

*Forms of government*¹⁸

Following the classical tradition of classifying governments according to the number of representatives (one, a few or all) the forms of government are monarchy, aristocracy and democracy. Without analyzing the concept of “forms of government” (which is not the objective of this monograph) it is a fact that there are states following different classical patterns. From states that claim to have absolute monarchies like Brunei, Oman, and Qatar through constitutional states like the United Kingdom, Denmark and Spain to representative democracies (most countries) the globe offers a wide spectrum of examples in which, although the form of government differs, all cases are still states.

Division of powers

In the typical model in democracies (and some other forms of government), division of powers is the way the powers of government are divided into a *trias politica*: executive, legislative and judicial power. Each of the three mentioned branches embeds one of the classic forms of government: the executive and the monarch; the judiciary and the aristocracy; and the legislative and democracy.

17 For detailed information see the Principal Global Indicators by the International Monetary Fund (IMF) available at <http://www.principalglobalindicators.org/?sk=E30FAADE-77D0-4F8E-953C-C48DD9D14735> accessed 08/May/2019 and Indicators by the World Bank available at <https://data.worldbank.org/indicator?tab=all> accessed 08/May/2019.

18 See the section “Kinds of states” in this chapter for further details.

Without any further analysis, it is self-evident that there are different degrees of separation of powers around the world. Consequently, to have only one central power or to have it divided into branches does not alter the existence of a state. This is not a necessary condition.

Autarchy

Autarchy refers to the ability a state has to balance its accounts independently, without the aid of an external agent. It is a notion directly linked to sovereignty.¹⁹ Some states are heavily in debt to other international bodies. Arguably, when a state is heavily in debt in relation to other international agents its government may see its internal and external decision-making power affected. However, a debtor state is still an independent political structure. Although it is ideal, autarchy is not a necessary condition for a state to exist.

Currency

The system of money used in a particular state may be exclusive to that political organization, but it does not need to be. The ability to make decisions in relation to the type of currency, exchange rate and related issues is independent of the existence of the state. Currency is not a necessary condition. The international arena provides a clear example: most of the Member States in the European Union share a common currency (the Euro) but they still keep their status as individual states.

Diplomacy

Diplomacy is the activity of negotiations among states on issues of economics, politics, law, peace and war, and similar matters. It is usually conducted by the head of the state and/or representatives designated to do so (diplomats). It could be considered as a means a country has to ensure participation in the international forum.

In the current global reality it is highly advisable to have international representatives. Every state needs active relations with its peers to meet and defend its population's needs. However, it is not strictly an indispensable component in order for a state to exist.

A different angle departing from the idea that a state should (potentially must) have representatives is the case in which states share diplomats with their peers. In other words, an individual or a group of people may represent more than one state. There is no legal or political reason to prevent this. The only reservation may relate to instances in which interests may be contradictory between or among the involved parties. The European Union provides another example: diplomatic and

19 This point is reviewed in more detail in the next chapter.

consular protection provided for European Union citizens by a Member State different from the country of their nationality.²⁰ In brief, to have representation in the international arena is highly recommendable (almost imperative) for a state; to have its own it is not.

Law

Very broadly, law is a set of legal norms or rules that govern human behavior. For the purpose of this chapter, this sub-section only considers national law and international law in relation to a state.

According to the traditional view,²¹ national law is the set of rules or legal norms that regulates the behavior of a group of people within a territory. A law is an obligation, a permission or a prohibition about some possible action, omission or status. This law is created by someone (an individual, a body, an institution, representatives) for someone else (population) and is applicable within defined borders (territory).

International law has to do with rules and legal norms created to facilitate and guide relations among different states.²² For example, supranational organs create and apply law that may be binding for some participating sovereign states that fulfill certain criteria—i.e. to reconcile the difference between European Union regulations and directives according to arts. 288 T.F.E.U.; the German constitution of 1949, art. 25; and the Argentinean constitution after 1994 reform, arts. 31 and 75.22; etc. As a result, the law may have internal or external origin and be considered valid in both cases without altering the notion of state.

So far, this chapter has introduced the term state and its classically accepted components in legal and political sciences and international relations: population, territory, government and law. These elements are necessary requirements for a state to exist. The following section introduces some of the theories that refer to the state and its nature.

20 Arts. 20 (2.c) and 23 Treaty on the Functioning of the European Union.

21 For a sketch of different views about law see the author's previous work Jorge E. Núñez, "Normative Systems as Law in Synergy: Validity and Effectiveness," in: *Philosophy of Law and State Responsibility* (St. Petersburg: St. Petersburg State University, 2012); Jorge E. Núñez, "The Logical Analysis of Law as a Bridge between Legal Philosophical Traditions," *Jurisprudence* 7:3 (2016): 627–635; Jorge E. Núñez, "The Force of Law: Law and Coercion, Validity and Effectiveness, and Synergy," in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Force of Law Reaffirmed* (Springer, 2016); Jorge E. Núñez, "The Forces in Law: Sanctions and Coercions," *Australian Journal of Legal Philosophy*, 42:1 (2017): 145–164; Jorge E. Núñez, "The Many Forces in Law: Rational, Physical and Psychological Coercion," in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Normative Force of the Factual* (Springer, 2019).

22 There are other international agents in addition to sovereign states. This monograph does not consider them.

Theories

Despite the fact there are several theories in the legal and political sciences that refer to the state and its nature,²³ they all have to do with the necessary elements identified in the previous section. Depending on which element the theory focuses on, the theory will mainly refer to law, realpolitik or the internal or external facets of the same entity: the state. A state as a political community occupies a space (in land, water, cyber or outer space) and can be defined based on any of its elements. The following quotation illustrates this point:

Any relation of power and rule occupies a certain political space [...]. This space may be territorially defined, but can also be based on functional traits, or personal characteristics. Territorial space is based on a demarcated geographical area. A function-based space is defined by a certain policy area or occupation. [...] Person-based space is not determined by where a political actor is located, or what a political actor is doing, but which characteristics the political actor has.²⁴

Justification and analysis behind a theory will be heavily influenced by the particular element of focus. In other words, the point of departure of each of these theories results in one pre-determined destination in law or realpolitik. Depending on their point of departure, different theories will view the same phenomenon—the state—in different ways.

State and law

There are many agents in international law. The main character in the international legal stage is the state. The state, in order to be a subject of international law, must have the necessary conditions mentioned above: population, territory and government. Moreover, to be recognized by its peers it has to be sovereign.²⁵ Sovereignty, in turn, is currently characterized in law by reference to territorial sovereignty.²⁶ Therefore, theories in law related to the state mainly have to do with its title to territory.²⁷ But this is not the only view in law about the state. For

23 See, for example, A. Vincent, *Theories of the State* (Oxford: Blackwell, 1987) and Erika Cudworth *et al.*, *The Modern State: Theories and Ideologies* (Edinburgh: Edinburgh University Press, 2007).

24 Hans Vollaard, “The Logic of Political Territoriality,” *Geopolitics*, 14:4 (2009): 687–706.

25 The concept of sovereignty is reviewed in detail in the next chapter.

26 See Malcom N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2017). See in particular chapter 9.

27 Note the word “mainly.” The next subject shows that political science has a more “subjective” view of the state centering the analysis mainly on population and government and their relationship. In turn, the next chapter explores the concept of self-determination that gives preeminence to people.

an extreme view, law and the state are both a group of legal norms with certain characteristics.²⁸ Note that legal norms and principles referred to the legal birth of a state, acquisition of territory, laws pertaining air, sea, outer- and cyber-spaces, recognition and others are out of the scope of this monograph.²⁹ The following paragraphs look at some of the most relevant legal theories related to the state.

Original entitlement of the territory

Two main theoretical approaches in law refer to territory before any population may legally constitute a state: *terra nullius* or *res communis*—i.e. the originally uninhabited territory belongs to no-one or everyone has some rights over it. The notion of common heritage of mankind is included in the Convention on the Law of the Sea, and the Moon Treaty brings the theory to international legislation.³⁰

*The objective theory of territory*³¹

Similar to municipal law and the relationship between a natural or legal person and an object, the objective theory of territory assumes there is a legal relationship between the state and its territory. In that sense, the state has exclusive ownership and use of the territory in the same way a natural or legal person has exclusive ownership and use of an object of their property. The rights implicit in this exclusive relationship imply an obligation *erga omnes*. With the right a natural or legal person has over their object, the rest of mankind has an obligation to refrain from doing anything in relation to that object (unless the owner grants permission).³² In a similar way, with the rights a state has over its territory there is a consequent obligation for other states not

28 Hans Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, Ltd., 2009).

29 See chapter 1. The aforementioned issues have to do specifically with public international law. This monograph explores the points in which law, political science and international relations deal with key conceptual elements related to territorial disputes in different manners (or with different foci) resulting in different conceptions of the same phenomena. By exploring these differences this monograph intends to build a bridge among the disciplines in order to be able to assess territorial disputes using a common hermeneutical platform. By proceeding in this way, biased discrepancies based on points of view rather than the object of analysis can be avoided.

30 See Malcom N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2017). See in particular chapter 9; and Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 2008). See in particular chapter 8.

31 Classification based on Giovanni Distefano, "Theories on Territorial Sovereignty: A Reappraisal," *Journal of Sharia and Law* 41 (2010): 25–47.

32 For a more detailed analysis about rights, obligations and permissions see Jorge E. Núñez *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 4. See also Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* (1913): 16–59; and Wesley Newcomb Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* (1917): 710–770.

to interfere. Public international law conventions such as territorial integrity and the principle of non-interference have to do with this theory.

*The subjective theory of territory*³³

The basis of this theory has to do with the state being constituted by some basic elements. Together with territory, population and government are necessary elements to give birth to any state. In addition to this, the state is subject to public international law. Each of the necessary elements that constitute a state are part of a legal fiction, a legal person. Since the state as a subject of public international law is composed of many elements (not only its territory) a state has jurisdiction over matters taking place in its territory, even if other components take place elsewhere. This theory was slow to be accepted, but has gained a more central role in relation to transnational crimes such as terrorism, money laundering, arms dealing and drug and human trafficking.

The purely legalist theory of the state

For an extreme legalist view, state and law are the same phenomenon. Kelsen maintains that state and law inter-define each other. Indeed, the state “*is the personification of a legal order*.”³⁴ The difference between the national legal order, the state, and the international legal order is their degree of centralization in regard to the creation and application of law.³⁵ For this view, the state is a centralized legal order with designated authorities to create and apply the law. By contrast, international law lacks central authorities for the creation and application of law in respect to all international legal subjects.³⁶

The state and political science

Political science, when considering the state, looks mainly at the relationship between two necessary conditions: population and government. The theories that political science presents about the state always have something to do with the way in which these two elements interact—i.e. rights and obligations, represented and representatives, fights between social groups, state as an organization, state as a means to an end and many others. The account below is not exhaustive. It intends to give a sense of the range of different theories in political science related to the

33 Classification based on Giovanni Distefano, “Theories on Territorial Sovereignty: A Reappraisal,” *Journal of Sharia and Law* 41 (2010): 25–47.

34 Hans Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, Ltd., 2009), 197.

35 Hans Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, Ltd., 2009), 325.

36 For an extensive view see Hans Kelsen, *Introduction to the Problems of Legal Theory* (Oxford: Clarendon Press, 1992), chapter IX, in partic. 112 *in fine* and 113 *supra*.

state in order to show the ideology behind them and that, in all cases, they refer to the same necessary components: population and government.³⁷

Liberalism

The majority of states, at least in the West, currently define themselves as liberal democracies. Intertwined with the liberal view of the state is the notion of pluralism.

Any community or population consists of people who are different in many ways. Pluralism is a permanent feature.³⁸ Similar to civil society, the international community includes agents of very different natures (sovereign states, cultures, subcultures, religions and individuals). People in civil societies may be weak or strong, wealthy or poor, classed as abled or disabled, and so on; while the international arena includes states and pseudo or failed states, developed and non-developed nations, democratic and non-democratic legal systems, populated and unpopulated territories and others. Both in the case of civil societies and the international community, national and international agents recognize some inter-subject rules of conduct. Liberalism, at least for one view, defends values such as toleration and personal liberty that allow pluralism.³⁹

Marxism

Marx did not have a theory of the state.⁴⁰ As a response to the liberal theory, Marxists maintain that although liberalism claims the state protects the individual, it is in fact an instrument for domination of classes. The state controls the means of production. By controlling the state, and therefore the means of production, the dominant class secures its place of privilege in society.⁴¹

Depending on the role the state places on the relationship between dominant and weak classes, there are three Marxists approaches to the state: the instrumentalist (the state is an instrument of class domination), the structuralist (differentiating between social classes and the state itself, the state being a different structure that arbitrates between classes) and the strategic-relational (which tries to

37 For a detailed analysis of these and other theories in political science referred to the state see Erika Cudworth *et al.*, *The Modern State: Theories and Ideologies* (Edinburgh: Edinburgh University Press, 2007).

38 Referring to John's Rawls' idea of pluralism as a "permanent feature of a democratic society" developed in John Rawls, *Justice as Fairness: A Restatement* (Harvard: Harvard University Press, 2003) in partic. 84.

39 George Crowder, "Two Value-pluralist Arguments for Liberalism," *Australian Journal of Political Science* 37:3 (2002): 457–473.

40 Erika Cudworth *et al.*, *The Modern State: Theories and Ideologies* (Edinburgh: Edinburgh University Press, 2007); D. Wells, *Marxism and the Modern State: An Analysis of Fetishism in Capitalist Society* (Sussex: Harvester Press, 1981); P. Wetherly, *Marxism and the State: An Analytic Approach* (Basingstoke: Palgrave, 2006).

41 Olusegun Oladipo, "The Marxist Theory of the State," in: F. A. Adeigbo, ed., *Readings in Social and Political Philosophy* (Ibadan: Claverianum Press, 1991), Vol. I.

bridge the gap between the other two approaches through a dialectic between agency and structure).

Kantianism

Kant contextualizes the issue within a world *civitas*, a union of nations or even an international federation. For the international environment, he understands as necessary the creation of an interstate system. The reason is clear. In his words:

A league of nations in accordance with the idea of an original contract...not in order to meddle in one another's internal dissensions but to protect against attacks from without...This alliance must, however, involve no sovereign authority (as in a civil constitution), but only an association (federation); it must be an alliance that can be renounced at any time and so must be renewed from time to time.⁴²

Kant evokes here the notion of equality he uses in internal affairs, granting every state the same relative situation. In order to complete a Kantian view about the state, two notions follow:

- a "No state shall forcibly interfere in the constitution and government of another state."⁴³ Kant is clearly referring to what nowadays is considered as a principle of non-interference.
- b "Each nation, for the sake of its own security, can and ought to demand of the others that they should enter along with it into a constitution, similar to the civil one, within which the rights of each could be secured. This would mean establishing a federation of peoples....[W]e are here considering the right of nations in relation to one another in so far as they are a group of separate states which are not to be welded together as a unit."⁴⁴

In brief, Kant maintains that, as with individuals in internal affairs, states are equal in the international arena. They may (and in fact he intends they have to) be part of a federation. Kant rejects the idea of a super-state. That is because states as parts of the federation are equal with other member states, all united by a common constitution.

42 Immanuel Kant, *The Metaphysics of Morals*, M. Gregor, trans. (Cambridge: Cambridge University Press, 1998), 114.

43 Immanuel Kant, *Political Writings*, H. Reiss, ed., H. B. Nisbet, trans. (Cambridge: Cambridge University Press, 2000), 96.

44 Immanuel Kant, *Political Writings*, H. Reiss, ed., H. B. Nisbet, trans. (Cambridge: Cambridge University Press, 2000), 102.

Anarchism

This view opposes to the idea of the state itself. It is based on individual freedom and autonomy, and in it the state, at best, a peripheral role.⁴⁵ The theories, mainly focused on the state as a structure, can be classified into anarcho-capitalism and anarcho-communism. The former advocates the elimination of the state in defense of self-ownership and the market while the latter, by also eliminating the state, aims to obtain common ownership and fair distribution of wealth. Anarcho-communism should not be confused with Marxism. While both Marxists and anarchists see the state as an instrument of class domination, for anarchists the classes exist because of the state; without the state there would not be classes. For Marxists, the state is created as a result of the conflict between classes.

Weberianism

The state, as a political community, is a relation of dominance of men over men.⁴⁶ Regardless of its justification, in order to secure that dominance, the state has the monopoly of power. In that sense, the state is the only legitimate party able to use physical force against individuals.

Weber's theory finds a parallel in legal science in Kelsen's view. Social orders such as religion, morality and law exist in order to let subjects and social aggregations have their conducts regulated within an interactive framework of society. Law prescribes certain advantages and disadvantages to its observance and non-observance. Coercion is an example of a direct means to motivate behavior. The use of *force*—physical coercion—is the exclusive prerogative of law as the enforcer of social order.⁴⁷

45 R. Ashley, "Untying the Sovereign State: A Double Reading of the Anarchy Problematique," *Millennium* 17:2 (1988): 227–262; H. Bull, *The Anarchical Society* (Basingstoke: Macmillan 1977).

46 Max Weber, "Politics as a Vocation" in *The Vocation Lectures* (Indiana: Hackett Publishing Co. Inc., 2004). See also H. Gerth and C. Wright Mills, *From Max Weber* (London: Routledge, 1991).

47 See Hans Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, Ltd., 2009). For the author's view see Jorge E. Núñez, "Normative Systems as Law in Synergy: Validity and Effectiveness," in: *Philosophy of Law and State Responsibility* (St. Petersburg: St. Petersburg State University, 2012); Jorge E. Núñez, "The Logical Analysis of Law as a Bridge between Legal Philosophical Traditions," *Jurisprudence* 7:3 (2016): 627–635; Jorge E. Núñez, "The Force of Law: Law and Coercion, Validity and Effectiveness, and Synergy," in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Force of Law Reaffirmed* (Switzerland: Springer, 2016); Jorge E. Núñez, "The Forces in Law: Sanctions and Coercions," *Australian Journal of Legal Philosophy*, 42:1 (2017): 145–164; Jorge E. Núñez, "The Many Forces in Law: Rational, Physical and Psychological Coercion," in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Normative Force of the Factual* (Switzerland: Springer, 2019).

Fundamentalism

There is no universally accepted definition of fundamentalism, although there are some similarities in most accepted characterizations.⁴⁸ For instance, they may differ when it concerns which people or groups should be considered fundamentalists. They may include any armed/military movement used against citizens of any state. The rationale behind this is that the armed forces are substantially stronger than a terrorist group or a revolting group of people. Another reason why fundamentalism has been difficult to define is based on what has been considered terrorism and the use of naming conventions. Overall, the action of violence, with the intent of controlling or intimidating and for the purpose of changing a government or forcing a response based on any religious beliefs, is the commonality when it comes to defining fundamentalism.

The state is based on a sacred past and it is the interpretation of a sacred text that dictates beliefs and practices.⁴⁹ Although sometimes confused with Islamist extreme movements, fundamentalism can refer to any belief system and such movements appeal to governments aiming for moral influence over society as a result. In contrast, extreme Islamism intends to remove and replace the government, take over the state and Islamize the population.

The minimal state

Nozick is trying to implement Kant's view that people are ends and not merely means. Nozick's theory is deontological, like Kant's; but while Kant's theory focuses on duties, Nozick's focuses on rights. His theory's main aim is to guarantee that the person's rights are not interfered with. Nozick goes as far as to question whether the existence of a state is justifiable.⁵⁰ From the idea of distinctness of persons to that of self-ownership, his theory implies both the right to liberty (non-interference at the individual level) and to property. In consequence, he only accepts the existence of a minimal state with its main aims being to protect exactly these two rights.⁵¹ From there, it can be inferred that sovereignty is limited in Nozick's theory (or at least, it cannot be an absolute concept). Leaving aside general critics to Nozick's work, the main point is that

48 Steve Bruce, *Fundamentalism* (Cambridge: Polity Press, 2008); Malise Ruthven, *Fundamentalism: A Very Short Introduction* (Oxford: Oxford University Press, 2007).

49 The author intentionally refers to the "interpretation of a sacred text" and not the "sacred text" itself as indicated in Cudworth 2007 at page 271 (referring to M. Marty and R. Scott Appleby, eds., *Fundamentalism and the State* (Chicago: University of Chicago Press, 1993), 3). See Erika Cudworth *et al.*, *The Modern State: Theories and Ideologies* (Edinburgh: Edinburgh University Press, 2007) and M. Marty and R. Scott Appleby, eds., *Fundamentalism and the State* (Chicago: University of Chicago Press, 1993).

50 Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), in partic. chapters 3, 4 and 5.

51 Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), in partic. 113 for Nozick's two necessary conditions in defining a state.

he does not accept more than a minimal state (hence, limited sovereignty); any further allocation of function to the state would mean a violation to the right either to liberty or to property.⁵²

State, law and realpolitik

This section shows that legal and political sciences have many theories related to the state, its origin and its nature. All these theories have something in common. They refer to at least one of the elements that characterizes the state, that is population, territory, or government (or government and law). From there, depending on the central element under discussion and the theoretical frame of reference, the same phenomenon will result in different evaluations.

Consider a liberal state that is a party in a territorial dispute.⁵³ What in principle appears to be a simple scenario can offer several interpretations. Some of these interpretations in law and realpolitik in terms of the state, the territorial dispute and the view of the relationship with other states could be:

- The state is a legally and politically individual organization in relation to the international environment (regardless of its internal organization).
- The state is a sovereign organization in the sense that it does not recognize any superior authority.
- The state shares the international scenario with several other international subjects. However, only its peers are sovereign.
- None of the states is completely self-sufficient to satisfy all of their population's needs.
- There is a variety of states that depends on the criteria for their classification: territorial extension, population density, level of economic development, whether the legal system includes the respect to human rights, etc.
- In principle, the states act in respect to their peers in a tolerant or mutually respectful way so as to secure reciprocal and local, regional and international peace, security and solidarity.
- There are, however, specific cases worldwide in which sovereignty over a determined territory is claimed by more than one sovereign state—i.e. territorial disputes.
- The states involved in a territorial dispute are in law equally sovereign and recognized by their peers. In realpolitik, however, there may be a plurality of realities—i.e. weak and strong state in many senses depending on the criteria for their classification. In other words, law does not admit any state to be considered as a weak international actor in the sense that a so-called strong one could use any kind of interference: the principle of sovereign equality of

52 Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), in partic. 149.

53 The example uses a liberal state because is the predominant choice, at least, in Western democracies.

the states.⁵⁴ Legally, states can be in very different economic, legal, social and governmental situations. They must, however, conduct their relations ensuring equal treatment with concern and respect: they are sovereign international actors disregarding their internal circumstances. Realpolitik, in turn, demonstrates a completely different reality with strong states using their respective advantages in order to interfere with the domestic, regional and international agendas of weak states.

This sketch demonstrates how what in principle appear to be equal states for one science—i.e. law—may not be that equal for the hermeneutics of another discipline—i.e. political science. When state and sovereignty are combined, the result is more complex—i.e. state sovereignty. In addition, if different sovereign states have mutually exclusive claims over the same territory—i.e. territorial disputes such as the Falkland/Malvinas Islands, Crimea, Kashmir, Catalonia, Gibraltar, Jerusalem and many others—the way in which the situation is assessed and therefore, the hermeneutical tools and theories of reference, is key in defining the result of that assessment.

Kinds of states

From the above sections, it is evident the state refers to a population in a territory with a government (or a government and law). Depending on the discipline—e.g. legal and political sciences—the focus on a particular defining element will result in a particular view about the state that may differ from other views. The consequences of these different conceptions of the same concept are many. As an example, the last section in this chapter includes several classifications used in science to refer to the state. Each of these classifications is based on a criterion or criteria that will have to do with a particular element.

*According to their legal internal structure*⁵⁵

Federation

A federation is a type of state formed by sub-states, provinces or regions that have in common a central government with delegated prerogatives. The case usually

54 Hans Kelsen, "The Principle of Sovereign Equality of the State as a Basis for International Organization," *Yale Law Journal* 53:2 (1944): 207–220. Note that there is more current academic literature related to the sovereign equality of states. The author includes Kelsen's 1944 work intentionally to demonstrate how little academia has worked in a multi-disciplinary manner since then to bring a joint solution to long-standing international disputes based on pluralism of states.

55 Every textbook in Public International Law includes at least a section on federalism. Therefore, the references that follow include a sample of sources that offer more current and varied views, including references to both legal theory and realpolitik. See Elliot Bulmer, *Federalism* (Stockholm: International Institute for Democracy and Electoral

mentioned in scholarly bibliography is the United States of America, but there are other several states that share the same or a similar structure (Argentina, Brazil, Canada, India and Venezuela, to name a few).

The member states, provinces, parties or regions keep part of their autonomy but delegate their sovereignty into a central government. It is of common use to have a central or national constitution as the highest legal norm within the legal order that defines functions and competences of the central authorities and the states.

At the same time, each state or province has its constitution that determines its own internal structure (general principles of law, type of government, authorities, functions, etc.). In tune with this, the governmental structure and division of powers are in general replicated in the capital of the federation and the capital of each state or province: President, parliament, higher or supreme court as central authorities for the federation as a whole; governor, legislature, lower courts in each state or province.

Federation and confederation

A confederation, different from a federation, has a more limited central power. As in the case of Switzerland, the states that are part of the confederation remain sovereign.

Sovereign states delegate certain prerogatives into a central government but they still remain individually sovereign. It is commonly created (legally) by an international agreement or treaty (bi or multilateral) in which the parties specify which functions they delegate to the central authorities and to what extent.

According to their political internal stability

There are several labels that refer to weak and strong states: central and non-central states, developed and underdeveloped states and, to an extreme, failed and quasi-states. The scholarly bibliography has evolved naming diverse kinds of states in different ways: what was once an underdeveloped state is now a non-central one; similarly, what was once a developed state is now a central one. Currently, scholars tend to designate weak and strong states. Regardless of the nominal distinction, weak, failed and collapsed states are those in which social, economic, political, juridical and/or other issues work against their integrity (in terms of their territory, population, government and/or legal system).

The internal or domestic situation in weak states tends to expand regionally and internationally by means of terrorism; drug, arms and human trafficking; and other

Assistance, 2017); *Introduction to Federalism* at Forum of Federations, available at <http://www.forumfed.org/federalism/introduction-to-federalism/> accessed 07/May/2019; John Law, "How can We Define Federalism?" *Perspectives on Federalism*, Centro Studi Sul Federalismo 5:3 (2013), available at http://on-federalism.eu/attachments/169_download.pdf accessed 07/May/2019.

issues that go against global security.⁵⁶ Although there are international organizations such as the United Nations directly involved in assisting weak and collapsed states, there is a self-evident urgency to address these situations in a more permanent manner.⁵⁷ Some scholars have argued that weak and collapsed states are unable to solve their problems themselves and require external assistance.⁵⁸ These scholars advocate for “neo-colonial shared sovereignty.” Advocates of this position apply “shared sovereignty” to situations in which there is one sovereign state (usually a weak one)⁵⁹ and another assisting party, usually an international organization or another state.⁶⁰

*According to the type of government*⁶¹

From a classical Aristotelean view that classifies the forms of government in pure types such as monarchy, aristocracy and democracy⁶² to more current hybrid regimes,⁶³ the world offers examples that go from liberal democracies to politically closed authoritarianism. States such as Venezuela, Indonesia, Turkey and many others challenge the classical classifications.

On the one hand, a purely legalistic view centers the analysis on issues pertaining to the validity of the legal order: whether the national constitution includes human rights, the inclusion or exclusion of the death penalty in criminal law, requirements related to free and universal suffrage, among others. Whether these valid legal norms are effectively exercised is a different matter.⁶⁴

56 Krasner, Stephen D. and Pascual, Carlos, “Addressing State Failure,” *Foreign Affairs* 84:4 (2005): 153–163.

57 Krasner, Stephen D. and Pascual, Carlos, “Addressing State Failure,” *Foreign Affairs* 84:4 (2005): 153–163.

58 Stephen D. Krasner, “Sharing Sovereignty, New Institutions for Collapsed and Failing States,” *International Security* 29 (2004): 85–120.

59 For a view of weak, collapsed or pseudo-States see Tanja E. Aalberts, “The Sovereignty Game States Play: (quasi-)States in the International Order,” *International Journal for the Semiotics of Law* 17 (2004): 245–257; Stephen D. Krasner and Carlos Pascual, “Addressing State Failure,” *Foreign Affairs* 84:4 (2005): 153–163; Paul Collier, “The Political Economy of State Failure,” *Oxford Review of Economic Policy* 25 (2009): 219–240; and many others.

60 For the author’s views about weak and collapsed states, shared sovereignty and “neo-colonial shared sovereignty” see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), in partic. chapter 3.

61 For a broad notion about forms of government see the section “State and its elements” in this chapter.

62 Aristotle, *The Politics*, B. Jowett, trans. (Oxford: Oxford University Press, 1885).

63 Larry Jay Diamond, “Thinking about Hybrid Regimes,” *Journal of Democracy* 13:2 (2002): 21–25.

64 Note in legal science and legal philosophy the distinction between validity and effectiveness. See the author’s view see Jorge E. Núñez, “Normative Systems as Law in Synergy: Validity and Effectiveness,” in: *Philosophy of Law and State Responsibility* (St. Petersburg: St. Petersburg State University, 2012); Jorge E. Núñez, “The Logical Analysis of Law as a Bridge between Legal Philosophical Traditions,” *Jurisprudence* 7:3 (2016): 627–635; Jorge E. Núñez, “The Force of Law: Law and Coercion,

On the other hand, political science takes into account extra-legal factors such as the views of independent observers, electoral fraud, and unelected military representatives in position of power.⁶⁵

*According to its facets*⁶⁶

This point is intrinsically linked to the concept of sovereignty. A state has to do with population in a territory with a common government (or government and law) as well as with its relationship with its peers in the international arena. The former refers to the internal or inward-looking facet; the latter refers to the external or outward-looking one. Both the inward and outward views of the state are concerned with the same elements (population, territory and government).

The internal view has to do with each of these elements. For example, in terms of population, a common language, heritage or ethnicity that makes them an homogeneous nation (or the opposite); in terms of territory, the existence of natural resources, territorial extension and borders; in terms of government, the prerogative every state has to determine its form and its division of power.

The external view implies the existence of other states, and bi- and multi-lateral relationships with them. Principles of public international law are applicable to this view: recognition, non-intervention, territorial integrity, different types of jurisdictions. Similarly, doctrines with origins in realpolitik have gained legal status and have direct consequences on the external facet of the state such as the responsibility to protect.⁶⁷

Validity and Effectiveness, and Synergy,” in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Force of Law Reaffirmed* (Switzerland: Springer, 2016); Jorge E. Núñez, “The Forces in Law: Sanctions and Coercions,” *Australian Journal of Legal Philosophy*, 42:1 (2017): 145–164; Jorge E. Núñez, “The Many Forces in Law: Rational, Physical and Psychological Coercion,” in: Christoph Bezemek and Nicoletta Ladavac, eds., *The Normative Force of the Factual* (Switzerland: Springer, 2019).

65 For an up-to-date view see *Freedom in the World 2019: Democracy in Retreat* (2019) published by Freedom House, available at https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf accessed 07/May/2019. See also Philippe C. Schmitter and Terry Lynn Karl, “What Democracy Is ... and Is Not,” *Journal of Democracy* 2 (1991): 75–88; Terry Lynn Karl, “The Hybrid Regimes of Central America,” *Journal of Democracy* 6 (1995): 72–86. See also Terry Lynn Karl, “Dilemmas of Democratization in Latin America,” *Comparative Politics* 23:1 (1990): 1–21; Jørgen Elklit and Palle Svendsen, “What Makes Elections Free and Fair?” *Journal of Democracy* 8 (1997): 32–46; Richard L. Sklar, “The Significance of Mixed Government in Southern African Studies: A Preliminary Assessment,” in: Toyin Falola, ed., *African Politics in Postimperial Times: The Essays of Richard L. Sklar* (Trenton, N.J.: Africa World Press, 2002), 479–487.

66 For the author’s views on conceptual uses related to internal or external sovereignty, refer to Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 2.

67 This classification (like any other) is an hermeneutical device and is therefore limited to conceptual analysis. In that sense, for example, states may divide internally their power between different institutions while externally they are acknowledged as an indivisible power no matter how they are internally organized. Nevertheless, both

Conclusion

This chapter examined the concept of “state.” First, it included a reference to each of the state’s components—population, territory, government (or government and law)—and referred to some of the sub-elements that characterize each element. The next section introduced a sample of theories in legal and political sciences that refer to the state to demonstrate that each of the elements introduced in the first section were present. However, each theory gives pre-eminence to one or some of them, at the expense of others, in their analysis. Finally, the chapter presented some classifications of states taking as a defining criterion or criteria one or more of its constitutive elements.

The overall aim of the chapter was to provide evidence that, despite referring to the same concept (the state) and the same elements (population, territory and government (or government and law), legal and political sciences offer different conceptions based on the element (or sub-element) on which their analysis focuses. Disagreements in the respective evaluations are to be expected because of their different points of departure. Nevertheless, this chapter shows this disagreement is not intrinsic to the concept of state itself but to the views related to the concept (or real phenomena behind this concept). These views are based on hermeneutical and evaluative elements than can easily be agreed between different disciplines in order to have conceptual and substantive results that can further the study of the state.

In relation to territorial disputes in particular, the chapter introduced, defined and characterized the state’s basic constitutive elements (territory, population, government and law) in legal and political sciences. The conceptual elements will be essential to demonstrating in subsequent chapters that the underlying assumption that territorial disputes center on the element “territory” do not offer a comprehensive understanding of the complexity of these disputes.

Bibliography

- Aalberts, Tanja E. “The Sovereignty Game States Play: (quasi-)States in the International Order.” *International Journal for the Semiotics of Law* 17 (2004): 245–257.
- Alcinkoff, T. Alexander and Klusmeyer, Douglas, eds. *Citizenship Today. Global Perspectives and Practices*. Washington, D.C.: Carnegie Endowment for International Peace, 2001.
- Alexy, Robert “On the Concept and the Nature of Law.” *Ratio Juris* 21:3 (2008): 281–299.
- Aristotle. *The Politics*. B. Jowett, trans. Oxford: Oxford University Press, 1885.
- Ashley, Richard. “Untying the Sovereign State: A Double Reading of the Anarchy Problematique.” *Millennium* 17:2 (1988): 227–262.
- Brownlie, Ian. *Principles of Public International Law*. Oxford: Oxford University Press, 2008.
- Bruce, Steve. *Fundamentalism*. Cambridge: Polity Press, 2008.
- Bull, H. *The Anarchical Society*. Basingtoke: Macmillan, 1977.

views are part of the same entity in legal and political sciences: the state. Therefore, any modification at the internal level may have consequences for the external side and vice-versa.

- Bulmer, Elliot. *Federalism*. Stockholm: International Institute for Democracy and Electoral Assistance, 2017.
- Cassese, Antonio. *International Law*. Oxford: Oxford University Press, 2001.
- Collier, Paul. "The Political Economy of State Failure." *Oxford Review of Economic Policy* 25 (2009): 219–240.
- Crowder, George. "Two Value-Pluralist Arguments for Liberalism." *Australian Journal of Political Science* 37:3 (2002): 457–473.
- Cudworth, Erika et al. *The Modern State: Theories and Ideologies*. Edinburgh: Edinburgh University Press, 2007.
- Diamond, Larry Jay. "Thinking about Hybrid Regimes." *Journal of Democracy* 13:2 (2002): 21–25.
- Distefano, Giovanni. "Theories on Territorial Sovereignty: A Reappraisal." *Journal of Sharia and Law* 41 (2010): 25–47.
- Dunleavy, Patrick and O'Leary, Brendan. *Theories of the State: The Politics of Liberal Democracy*. London: Macmillan, 1987.
- Eder, Klaus and Giesen, Bernard, eds. *European Citizenship between National Legacies and Postnational Projects*. Oxford: Oxford University Press, 2003.
- Elklit, Jørgen and Svensson, Palle. "What Makes Elections Free and Fair?" *Journal of Democracy* 8 (1997): 32–46.
- Evans, Malcom D. *International Law*. Oxford: Oxford University Press, 2010.
- Franzese, Patrick W. "Sovereignty in Cyberspace: Can It Exist?" *Air Force Law Review* 64 (2009): 1–42.
- Gerth, H. and Wright Mills, C. *From Max Weber*. London: Routledge, 1991.
- Hall, John A. and Ikenberry, G. John. *The State*. Milton Keynes: Open University Press, 1989.
- Hans, Vollaard. "The Logic of Political Territoriality." *Geopolitics* 14:4 (2009): 687–706.
- Hoffman, John and Graham, Paul. *Introduction to Political Theory*. Oxon and New York: Routledge, 2015.
- Hohfeld, Wesley Newcomb. "Fundamental Legal Conceptions as Applied in Judicial Reasoning." *Yale Law Journal* (1917): 710–770.
- Hohfeld, Wesley Newcomb. "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning." *Yale Law Journal* (1913): 16–59.
- James, Alan. *Sovereign Statehood: The Basis of International Society*. London: Allen & Unwin, 1986.
- Kant, Immanuel. *Political Writings*. H. Reiss, ed., H. B. Nisbet, trans. Cambridge: Cambridge University Press, 2000.
- Kant, Immanuel. *The Metaphysics of Morals*. M. Gregor, trans. Cambridge: Cambridge University Press, 1998.
- Karl, Terry Lynn. "The Hybrid Regimes of Central America." *Journal of Democracy* 6 (1995): 72–86.
- Karl, Terry Lynn. "Dilemmas of Democratization in Latin America." *Comparative Politics* 23:1 (1990): 1–21.
- Kelsen, Hans. "The Principle of Sovereign Equality of the State as a Basis for International Organization." *Yale Law Journal* 2:53 (1944): 207–220.
- Kelsen, Hans. *General Theory of Law and State*. New Jersey: The Lawbook Exchange, Ltd., 2009.
- Kelsen, Hans. *Introduction to the Problems of Legal Theory*. Oxford: Clarendon Press, 1992.
- Krasner, Stephen D. "Sharing Sovereignty, New Institutions for Collapsed and Failing States." *International Security* 29 (2004): 85–120.

- Krasner, Stephen D. and Pascual, Carlos. "Addressing State Failure." *Foreign Affairs* 84:4 (2005): 153–163.
- Law, John. "How can We Define Federalism?" *Perspectives on Federalism* 5:3 (2013).
- Martin, Elizabeth A. and Law, Jonathan, ed. *A Dictionary of Law*. Oxford: Oxford University Press, 2006.
- Marty, M. and Scott Appleby, R., eds. *Fundamentalism and the State*. Chicago: University of Chicago Press, 1993.
- McConnell, Fiona. "De Facto, Displaced, Tacit: The Sovereign Articulations of the Tibetan Government-in-Exile." *Political Geography* 28 (2009): 343–352.
- Moore, Margaret. *A Political Theory of Territory*. Oxford: Oxford University Press, 2015.
- Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, 1974.
- Núñez, Jorge E. "Normative Systems as Law in Synergy: Validity and Effectiveness." In *Philosophy of Law and State Responsibility*. St. Petersburg: St. Petersburg State University, 2012.
- Núñez, Jorge E. "The Force of Law: Law and Coercion, Validity and Effectiveness, and Synergy." In *The Force of Law Reaffirmed*, Christoph Bezemek and Nicoletta Ladavac, eds. Switzerland: Springer, 2016.
- Núñez, Jorge E. "The Forces in Law: Sanctions and Coercions." *Australian Journal of Legal Philosophy* 42:1 (2017): 145–164.
- Núñez, Jorge E. "The Logical Analysis of Law as a Bridge between Legal Philosophical Traditions." *Jurisprudence* 7:3 (2016): 627–635.
- Núñez, Jorge E. "The Many Forces in Law: Rational, Physical and Psychological Coercion." In *The Normative Force of the Factual*, Christoph Bezemek and Nicoletta Ladavac, eds. Switzerland: Springer, 2019.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor & Francis Group, 2017.
- Oladipo, Olusegun. "The Marxist Theory of the State." In *Readings in Social and Political Philosophy*, Vol. I., F. A. Adeigbo ed. Ibadan: Claverianum Press, 1991.
- Rawls, John. *Justice as Fairness: A Restatement*. Harvard: Harvard University Press, 2003.
- Ruthven, Malise. *Fundamentalism: A Very Short Introduction*. Oxford: Oxford University Press, 2007.
- Schmitter, Philippe C. and Karl, Terry Lynn. "What Democracy Is ... and Is Not." *Journal of Democracy* 2 (1991): 75–88.
- Shaw, Malcom N. *International Law*. Cambridge: Cambridge University Press, 2017.
- Sklar, Richard L. "The Significance of Mixed Government in Southern African Studies: A Preliminary Assessment." In *African Politics in Postimperial Times: The Essays of Richard L. Sklar*, Toyin Falola, ed. Trenton, N.J.: Africa World Press, 2002.
- Vincent A. *Theories of the State*. Oxford: Blackwell, 1987.
- Weber, Max. "Politics as a Vocation." In *The Vocation Lectures*. Indiana: Hackett Publishing Co. Inc., 2004.
- Wells, D. *Marxism and the Modern State: An Analysis of Fetishism in Capitalist Society*. Sussex: Harvester Press, 1981.
- Wetherly, P. *Marxism and the State: An Analytic Approach*. Basingstoke: Palgrave, 2006.

3 Sovereignty and self-determination

Introduction

This chapter appraises the concepts of sovereignty and self-determination. Although both concepts are widely used in legal and political sciences, sovereignty gives priority to the state as a whole while self-determination centers on one of its elements: population. What is of interest to territorial disputes is that these concepts are not exclusive but inclusive. That is to say, sovereignty is assumed by many to be absolute, and self-determination seems to lead to independence. Consequently, territorial disputes are in a legal and political limbo because “territorial sovereignty” can be granted to only one of the claiming parties. Indeed, for this way of understanding sovereignty and self-determination the claims of various international agents to the same territory are mutually exclusive and collectively exhaustive.

This chapter demonstrates that there is no such a thing as absolute sovereignty: in all cases sovereignty is limited and, therefore, shareable. Furthermore, self-determination may lead to solutions other than independence. By demonstrating these two points there can be a shift from preconceived, narrow views to assessing territorial disputes in a different way and move toward resolving them.

Sovereignty is a complex concept. It assumes supreme authority and, for some, that means single non-shareable authority. The first part of this chapter demonstrates that sovereign states have factual and normative limitations and that, therefore, states may cooperate or be at odds with each other. This is an axiological choice and has nothing to do with sovereignty itself. Indeed, states accept limitations and may operate together, limit their sovereignty and still be considered fully sovereign. Whatever the extent of the limitations, dependence on the good will of the participants in any agreement, and any other elements that may jeopardize the strength of a joint international enterprise, these restrictions in theory and practice may either limit the state's choices or enhance them.

Because it is possible to assess territorial disputes by reference to population as well as territory, the will of the people who live in the space under dispute begs further exploration. It is at this point that self-determination—the prerogative of a population with certain characteristics to choose their political status—becomes relevant to territorial disputes. Despite what common knowledge assumes, self-

determination may result in situations other than independence such as integration, free association and shared sovereignty. If states can share sovereignty, territorial disputes can center on elements other than territory, and self-determination may lead to solutions other than independence, then there is room to resolve territorial disputes by cooperative approaches.

Factual, normative and value sovereignty

There are many definitions, views and conceptions of sovereignty.¹ The differences between these definitions or conceptions have to do with the frame of reference. For example, depending on the legal or political perspective, “sovereignty” may mean power or imply authority. Similarly, sovereignty can be viewed as internal or external, and as an attribute of a person, a body, a state or a supranational entity.

In the early Modern Age Bodin and Hobbes phrased the current scholarly understanding of the concept of sovereignty. To illustrate the evolution of the term, a classical and a current definition of “sovereignty” follow.

Aielte or Sovereignty is the most high, absolute, and perpetual power over the citizens and subjects in a Commonwealth...²

A Supreme authority in a state. In any state sovereignty is vested in the institution, person, or body having the ultimate authority to impose law on everyone else in the state and the power to alter any pre-existing law...In international law, it is an essential aspect of sovereignty that all states should have supreme control over their internal affairs...³

Any definition of sovereignty includes the concept of the highest, supreme, absolute authority in a territory and over a population. Within a territory, it means that lawmakers—i.e. the government—have the exclusive prerogative to create laws for these people. Externally, any other agent has the obligation not to interfere. From this very brief characterization, it is self-evident that sovereignty refers to normative elements such as national legal order and international legal agreements as well as factual ones such as territory and population.

- 1 For an extensive analysis on different views, conceptions and historical evaluations of “sovereignty” see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 2. For the latest on “sovereignty” see Christian Volk, “The Problem of Sovereignty in Globalized Times,” *Law, Culture and the Humanities* February (2019); Neil Walker, ed., *Relocating Sovereignty* (London and New York: Routledge, 2018); Kirby Brown, “Sovereignty,” *Western American Literature* 53:1 (2018): 81–89; Giovanni Picker, “Sovereignty Beyond the State: Exception and Informality in a Western European City,” *International Journal of Urban and Regional Research* 43:3 (2019): 576–581; and others. Subsequent chapters present and explore sources that refer to sovereignty in specific regions, disputes or conflicts.
- 2 Jean Bodin, *The Six Bookes of Commonweale* (London: Impenfis G. Bishop, 1903), 84.
- 3 Elizabeth A. Martin and Jonathan Law, *A Dictionary of Law* (Oxford: Oxford University Press, 2006).

As with any scientific discipline, law, political science and international relations study a subject. For the purpose of this section, the subject is “sovereignty.” Sovereignty may have real existence, existing in time and space, or a normative existence without necessarily having an actual presence in time and space; and it may be valued positively or negatively, including or excluding others.⁴

Consider the case of logic and mathematics. Their objects of study are not tangible and therefore do not physically exist; they are not part of any sensory experience; and they cannot be valued positively or negatively—nobody can claim the number 1 is good or bad, useful or useless. Consider, on the other hand, the natural sciences, in which objects such as plants, animals and rocks have a tangible existence, are accessible to people by their senses, and can be valued positively or negatively—the tree provides shade and therefore is pleasant to sit under in hot weather. Sovereignty as an object of study has a hybrid, eclectic nature. It may refer to actual elements or facts such as territory and population (factual realm) as well as ideal elements without tangible existence such as the legal order (normative realm). Sovereignty may (but it does not need to) be valued positively or negatively.

Sovereignty has to do with at least two realms: facts and norms. A sovereign state has some basic components: territory, population, government and law. Each of these components exists in at least two realms. “Territory,” “population,” “government” and “law” may have legal definitions and may also describe empirical attributes. Furthermore, the same empirical attributes may be valued differently against the same legal norms.

Examine the phrase “Chileans inhabit Chile.” The statement may refer to a group of any size of people of any personal circumstances who live on a given piece of land, as well as individuals who according to national Chilean law comply with rules of citizenship and live within nationally and internationally defined borders.

In addition to this, the same facts assessed against the same legal norms may be valued differently. Consider a group of people who take over by force the land previously inhabited by their neighbors. These simple facts may be valued differently. For example, the statement may describe a sovereign state in breach of international law using force against another sovereign state, a pseudo-state, an overseas territory of a sovereign state (as with Argentina’s assault on the Falkland/Malvinas Islands, arguably a territory of the United Kingdom), a province, or a region within a larger legal unity like the European Union, to annex that territory; or it may imply the act of self-defense against illegal occupation (Ukraine’s possible response to Russia’s occupation of Crimea).

4 The three-dimensional theory is based on Werner Goldschmidt, *Introducción Filosófica al Derecho* (Buenos Aires: Depalma, 1987). The trialistic theory moves from Kelsen’s pure theory and includes facts, norms and values in the legal analysis.

Factual sovereignty and normative sovereignty

Facts and norms have to do with sovereignty as a whole, and with each of its elements, yet facts and norms are not the same. Hence, using the term “sovereignty” as either a normative concept or to refer to factual elements of legal and political discourses means applying the same term but giving it different meanings. Moreover, depending on the way in which these facts are valued in light of the relevant legal norms, a shift in sovereignty may bring about different consequences. That is, what may, in principle, appear to be the same concept may actually invoke different conceptions due to different frames of reference.

Facts can broadly be seen as descriptive of the state of the world, and can change as the result of an act or event. An event is a change in the world without the interference of human will, while an act is a change in the world that depends on human will to happen.⁵ In both cases, events and acts interfere with the course of nature. In the latter, that interference is “at will.” This might mean, for example, the morning breeze opening a door that was ajar (event of the door being open) and someone opening the same door to enter the house (act of the door being open). In both cases, the result is an open door (the world with the door ajar changed into the world with the door fully open). The distinction between the two examples is that, in the second case, the “change in the world” was at will.

On the other hand, norms may be defined in many ways.⁶ For now, it will suffice to say that norms are commands, permissions and/or prohibitions given by someone in a position of authority to someone in a position of subject recipient. Some of these acts (changes in the world at will) are the center of legal analysis (legal norms, technically rules) and are relevant to the law. In all cases, these legal acts (acts relevant to the law) will have to do with changes in the world (that is, physical changes in the world).

Sovereignty as a conceptual and substantive construction will simply describe a set of events and/or acts that have to do with a given territory, group of people and time in the context of the discipline of reference—legal and political sciences, for example. That is to say, certain “facts” that are relevant for one reason or another to the legal or political sciences (or any other discipline) are conceptualized by means of “norms.”

Acts can be generic or individual (act-categories or act-individuals).⁷ A generic act, in principle, has to do with an unlimited number of cases that may change the world. For example, people may open and close the same door an unlimited number of times. An individual act, by contrast, can happen only a limited number

5 George Henrik von Wright, *Norm and Action* (London: Routledge and Kegan Paul, 1963); available at <https://www.giffordlectures.org/lectures/norm-and-action>, accessed 01/February/2018.

6 *Ibid.*, chapter I. See also chapters I and II of HLA Hart, *The Concept of Law* (Oxford: Oxford University Press, 1997).

7 George Henrik von Wright, *Norm and Action* (London: Routledge and Kegan Paul, 1963), chapter III; available at <https://www.giffordlectures.org/lectures/norm-and-action>, accessed 01/February/2018.

of times, such as the assassination of John F. Kennedy. Sovereignty has to do with both generic and individual acts. The continuous exercise of power over a territory is act-category and the creation of a particular piece of legislation at a given time is act-individual. Furthermore, there may be empirical or super-empirical agents. Leaving aside the latter, empirical agents can be personal or impersonal.⁸ The state as sovereign entity is an impersonal agent.⁹

So far in the discussion here, the sovereign state is an impersonal agent able to change the world at will. Sovereignty implies both generic and individual acts, and sovereignty may refer to facts as well as norms. There are at least two ways to view sovereignty: “factual sovereignty,” meaning sovereignty in the world of the facts, and “normative sovereignty”: sovereignty in the world of the rules.¹⁰ From there, sovereignty may have to do with a group of people who live in a land and carry out various activities. The same phenomena could be seen as “population” in a “territory” with a “common set of rules” that have a “higher and ultimate authority.” Reviewing each of the elements that constitute a state, factual and normative sovereignty result in different views:

- a Population: the world of the rules may divide the population of a sovereign state into “citizens” and “foreigners” (or “immigrants”), as well as “minors” and “adults,” “legally able” and “legally unable,” and many others. The world of facts related to the same individuals may have to do with language, ethnicity, religion, and many other characteristics. For example, an ethnic group can be defined as an assemblage of members who identify themselves with each other through a common background or heritage (real or assumed) and sharing a language, culture, religion, and race. A common ethnicity is not a necessary condition for the constitution of a sovereign state. In the world of rules, however, complying with rules of immigration, for example, defines the individual’s legal status in a sovereign state.
- b Territory: the world of the rules has to do with national and international law. Concepts such as “borders,” “limits,” “jurisdiction,” and “extradition” directly relate to “territory.” However, what bears little or no relation to law are questions of whether the territory is a desert or a jungle, whether it is densely inhabited or scarcely populated, or whether it is rich in natural resources. These and other circumstances are of a factual nature. A piece of

8 *Ibid.*

9 Note that “impersonal” does not mean “collective.” A collective agent is the sum of individual agents who still keep their individual will. An impersonal agent implies one will regardless of how many members compose its “body.”

10 See the author’s previous application of Hohfeld’s theory to the analysis of sovereignty in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 4. See also Wesley Newcomb Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” *Yale Law Journal* 23:1 (1913): 16-59; and Wesley Newcomb Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning,” *Yale Law Journal* 26:8 (1917): 710-770.

land is fertile or it is not. It would be futile to prescribe that the land *ought* to be fertile if it is not. The state may regulate the use of fertile pieces of land with rules, but that is different from considering a fact as belonging to the world of rules. It is simply the case that, to an extent, the world of rules regulates the world of facts.

- c Government: in the world of rules a government may be a person, group of people or a body that represents the will of the population. However, a government may as well be a person, group of people or body that represents some *other* will. The world offers a wide spectrum of examples in which, although the form of government differs, they are still sovereign states. Regardless of their legal form, these sovereign states have in the world of the facts people living in their territories, and some of these people, peacefully or by force, leading the others in internal and external affairs.

Factual sovereignty in the light of normative sovereignty

This review of the essential elements that characterize a sovereign state shows that the world of facts is re-interpreted by the world of rules. For various reasons, certain facts may be relevant to certain rules in different ways: operative facts, facts in issue, and evidential facts.¹¹

Operative facts are specific in nature and refer to a particular event. Merely by their existence, operative facts always imply legal relations. For example, Mary and Joe scribble lines on a piece of paper to describe an agreement they have made, in consequence of which Mary receives money from Joe on Wednesday, October 17, 2017, in Chicago. To the fact that Mary and Joe conducted a transaction follows the legal relation of a “contract” that implies rights and obligations between these two subjects in law. At a different time in history, scribbling lines on a piece of paper could signify a declaration of independence and the creation of a new sovereign state.

In contrast to operative facts, facts in issue are generic. Because they are generic, they can only be demonstrated by operative facts. In the example above, any individuals scribbling lines on a piece of paper or on any other surface to document exchanging money or anything else of value may be conducting a legal relation. There is a legal relation if and only if there is a specific event in which there are two actual subjects performing actions that generate reciprocal rights and obligations. Of a similar nature, in the case of a declaration of independence and resulting creation of a new sovereign state, is the fact that the declaration has been recognized by its international peers.

Finally, evidential facts can demonstrate the existence of other facts. Evidential facts appear before a court when it is dealing with a case. In the example above, were Joe to ignore his obligations towards Mary, Mary might take Joe to court and demonstrate her right with the contract both parties signed at the time they

¹¹ *Ibid.*

exchanged money. This is similar to the case of a newly formed sovereign state and its recognition by an international court by means of effective occupation.

To recapitulate, the world of the facts and the world of rules are two separate realms. However, the same phenomena can be valued within both realms at the same time. An interpreter may start by identifying actual, material facts and, from there, identify the legal relations they may create or demonstrate by applying the previously-introduced classification of operative facts, facts in issue, and evidential facts. Any legal construction or relation is constituted by *subatomic particles*. The starting point is an actual, material fact or event. Such an event is part of the world of facts and can exist in the world of rules. In other words, these facts are translated into rules or legal relations. By implication, whenever the interpreter is able to identify a legal relation in the world of rules it means there is (or there has been) an event in the world of facts.¹²

Territorial disputes, factual and normative sovereignty

Consider a case in which Joe is found guilty of murder by a criminal court in Chicago and sent to prison for 25 years. The legal relation shows that a natural person is being sentenced by a normative authority to comply with a negative sanction because of a breach in law. From this, the interpreter can infer that in the world of facts at some point in his life Joe may have killed another person. There is a legal relation, and therefore the interpreter is able to assume something has happened in the world of the facts.

Consider a similar case in terms of sovereignty. Assume NATO sanctions the Russian Federation with a blockade because Russia invaded Crimea, as NATO understands Crimea as being under the sovereignty of Ukraine. This example has several elements that have to do with the world of national and international rules. Legal relations such as sovereignty, territorial integrity, non-intervention, responsibility to protect and humanitarian intervention are easy to identify. Legal relations assume many events in the world of facts. The interpreter can assume¹³ that at a point in time the Russian Federation may have deployed troops, people and/or an army in Crimean territory. The interpreter can also infer that the world community has at some point recognized the sovereignty of Ukraine over Crimea, that Ukraine and Crimea are somehow related culturally, linguistically, geographically and ethnically—or at least historically, etc.

It is clear for a general understanding in legal and political sciences that “sovereignty” is a concept implying a single agent, limited in one way or another. In this example, the Russian Federation and Ukraine cannot at the same time have

12 Note that there are international laws relating to ownership of property on, for example, the Moon. They are not based on any event that has actually happened, but on an anticipation of events, extrapolated from cognate events (such as European claims on land in the Americas) that have happened.

13 The assumption may be, however, erroneous. For example, in 1939 Germany justified attacking Poland by pointing to the “fact” of Poland attacking Germany, which did not in fact happen.

sovereignty over Crimea. From there, it may be at least difficult to see how two sovereign states can cooperate, surrender part of their sovereignty and still be considered fully sovereign. In other words, current views in legal and political sciences assume that because Ukraine has exclusive prerogatives over its territory, and Crimea was formerly under Ukrainian territorial sovereignty, the Russian Federation should not intrude and therefore has the duty to stay out.

Assume that the population in Crimea decided to apply self-determination and accepted both Russian and Ukrainian governments. Additionally, assume that Ukraine invited the Russian Federation to participate in a shared sovereignty project, with both states surrendering their exclusive sovereignty claim to Crimea while making mutual concessions. Such an arrangement would be legally and factually possible. Both in the world of facts (factual sovereignty) and the world of rules (normative sovereignty) sovereignty is limited and, therefore, shareable.

Any territorial dispute includes more than one claiming party. Any legal relation with at least two agents includes obligations, permissions and prohibitions. In the international arena, obligations, permissions and prohibitions mean norms and principles such as non-intervention, territorial integrity or recognition of the equality of sovereign states. However, obligations, permissions and prohibitions are not enough to characterize the complexity of legal relations among claiming parties in territorial disputes.¹⁴ In principle, any sovereign state has the highest and supreme authority over its territory and population so its government can create and apply laws. Consequently, all other sovereign states have the obligation not to interfere. But this is still a very narrow view of the whole picture. A more detailed analysis shows that:

- a If sovereign state A may act in a certain way over its territory, all other sovereign states have no right over the same piece of land. For example, Argentina may create and apply the law within its boundaries and no other sovereign state can legally interfere.
- b Yet, in more complete terms, if sovereign state A may act in a certain way over its territory, all other sovereign states have no right over the same piece of land. All other sovereign states have a duty with regard to sovereign state A and its territory. For example, Turkey has exclusive rights over its territory, may create and apply law within its boundaries, and no other sovereign state

14 See Hohfeld's distinction between jural opposites (right and no-right, privilege and duty, power and disability, immunity and liability) and the jural correlatives (right and duty, privilege and no-right, power and liability, immunity and disability). See the author's previous application of Hohfeld's theory to the analysis of sovereignty in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 4. See also Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 16 (1913); and Wesley Newcomb Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 710 (1917).

- can interfere, which means all other sovereign states ought not to exercise any rights over that same territory.
- c Similarly, if sovereign state A must conduct its affairs in a certain way, it has a duty to any other sovereign state, and therefore any other sovereign state has a right against sovereign state A. For example, if Mexico and the United States have entered into a bilateral agreement by which Mexico grants certain rights to the United States in relation to border controls, the United States has rights over Mexico in relation only to the enumerated issues and Mexico ought to comply with them.
 - d If, by its voluntary conduct, sovereign state A can change sovereign state B's legal relations with A, sovereign state A has a legal power and B has a liability. In the hypothetical event that the Falkland/Malvinas Islands declared their independence and became a sovereign state but delegated their foreign affairs and defense to the United Kingdom, the UK would have legal power over these areas of activity in relation to the islands.
 - e If sovereign state A cannot, by its own voluntary conduct, change the legal relations of sovereign state B, then sovereign state A has a disability and B has an immunity. For example, in the hypothetical event Gibraltar declared its independence and became a sovereign state, Spain and the United Kingdom would not have any legal rights over Gibraltar and therefore, Gibraltar would be fully independent.

The above examples demonstrate that, although at first glance the basic deontic modes (obligations, permissions and prohibitions) may characterize at a superficial level sovereignty in the international arena, they are not enough to capture its complexity. Particularly relevant to sovereignty, an incomplete view appears to imply a single and supreme agent that has ultimate power over a given territory and its population, so that one has the right, and all others have no right. But this is an oversimplification. Legal relations and *realpolitik* show that it is in the combination of right and no-rights, privileges and immunities and other variables that the interpreter may capture the complexity that sovereignty has to offer.

More current notions in legal and political sciences and international relations, such as responsibility to protect and humanitarian intervention, appear to cut against the strict and classical view of sovereignty. Because of these new legal and political institutions, many have argued that the concept of sovereignty is in question¹⁵ or is fragmented.¹⁶ Similarly, in international relations, sovereignty has been (and still is) regarded as one of many myths.¹⁷

- 15 Neil Walker, "Sovereignty Frames and Sovereignty Claims," (University of Edinburgh, School of Law, Working Papers, 2013); Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford: Oxford University Press, 1999).
- 16 Hent Kalmo and Quentin Skinner, *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge: Cambridge University Press, 2010), 1–25.
- 17 Cynthia Weber, *International Relations Theory: A Critical Introduction* (Abingdon: Routledge, 2010), Introduction. See also Luke Glanville, "The Myth of 'Traditional' Sovereignty," *International Studies Quarterly* 57 (2013): 79–90.

This section shows that a sovereign state may be the exclusive, single agent in relation to its territory and population. Domestically, sovereignty may be indivisible or concentrated in the hands of one individual, or dispersed throughout the social body.¹⁸ Alternatively, it may be transcendental and representational.¹⁹ Regionally and internationally, however, a sovereign state may share its power, cooperate with other states or surrender part of its sovereignty without diminishing it or changing its nature. Sovereignty exists in the world of facts as well as the world of rules. A deeper, more comprehensive and multi-disciplinary understanding of sovereignty enables sovereign states to share their power and cooperate without affecting sovereignty's factual or normative existence.

The next section introduces the axiological realm to demonstrate that it is the subject in question—i.e. the sovereign state—and not sovereignty itself that makes the axiological choice of whether sovereignty is absolute or limited and, consequently, shareable.

Sovereignty and the axiological choice

In philosophy, absolutism implies an absolute reality and, therefore, claims objectivity beyond time and space. In contrast, philosophical relativism has a restrictive view that reality exists in as much as humans experience it. In a relative view, it is the knowing subject who defines the reality.²⁰ There is then an absolute, perennial, objective, atemporal and non-territorial truth; and there are many relative, changing, subjective, temporal and territorial ways of interpreting the truth.

In relation to sovereignty there are always at least two views, the national and the international, the factual and the normative, the absolute and the relative. The previous sections and sub-sections showed that although sovereignty is assumed to be absolute, factually and normatively it is limited. The assumption that sovereignty is absolute has to do with an axiological choice by the interpreter, who chooses among different options through an act of preference as to which of two conflicting values is better rather than good.²¹ An example would be balancing freedom and security in the face of terrorism. Applied to sovereignty, an absolute understanding allows for the public international law principles of sovereign equality of states, territorial integrity and non-interference. However, regardless of their legally-equal status, for different reasons explored below, some sovereign states seem to be in fact more equal than others and allow themselves to interfere with their peers as and when they wish, making

18 Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), 26.

19 Michael Hardt and Antonio Negri, *Empire* (Cambridge MA: Harvard University Press, 2000), 84.

20 Hans Kelsen, "Absolutism and Relativism in Philosophy and Politics," *The American Political Science Review* 42:5 (1948): 906–914.

21 Hans Kelsen, "Law, State and Justice in the Pure Theory of Law," *The Yale Law Journal* 57:3 (1948): 377–390.

sovereignty absolute or relative depending on their own interests. Consequently, sovereignty changes from absolute to relative depending on the axiological choice of the state in question.

There seems to be a clear distinction between legal and political sciences on this point. The principle of sovereign equality of states has recognition in public international law, such as in art 2, paragraph 1 of the United Nations Charter. Meanwhile, realpolitik shows that politically stable and economically developed states have a comparatively stronger influence in the international arena and, in many cases, do as they wish with their peers and international organizations. For example, while the United Nations acknowledges sovereign equality among the states, the veto power of the Security Council solidifies a pre-eminent position to only a few of them.²² Furthermore, the voting patterns of the arguably more democratic and representative General Assembly bring into question its degree of inclusion of non-central members.²³

The different approach to sovereignty in law and in politics has a direct impact in the unresolvable nature of territorial disputes because, in many cases, their ongoing nature secures a higher pay-off to central states than would a definitive and peaceful solution.²⁴

Domination

Whether factually or normatively, sovereignty has one meaning: supreme authority. However, supreme authority does not imply absoluteness.²⁵ There are three intertwined points for consideration here: supreme versus subordinate, absolute versus limited and undivided versus divided. Absolute sovereignty must always be supreme and undivided, because if sovereignty were either subordinated to any other authority or power or divided among different agents or institutions it would be somehow limited. It would have either vertical or horizontal limitations given, respectively, by the superior or the other institution or authority. Although sovereignty is supreme and may be undivided, there has never been such a thing as absolute sovereignty.²⁶

22 W. Michael Reisman, "The Constitutional Crisis in the United Nations," *The American Journal of International Law* 87 (1993): 83–100.

23 Jack E. Vincent, "Predicting Voting Patterns in the General Assembly," *The American Political Science Review* 65 (1971): 471–498; Axel Dreher, Peter Nunnenkamp and Rainer Thiele, "Does US Aid Buy UN General Assembly Votes?" *Public Choice* 136 (2008): 139–164; T. Y. Wang, "U.S. Foreign Aid and UN Voting: an Analysis of Important Issues," *International Studies Quarterly* 43 (1999): 199–210.

24 Chapters 6, 7 and 8 explore this point in more detail when assessing specific territorial disputes.

25 For the author's more detailed previous work on this point see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapters 2 and 4.

26 See Jorge Emilio Núñez, "The Origins of Sovereignty in the Hellenic World," *International Law, Conventions and Justice*, ed. David A. Frenkel (Athens: ATINER,

The commonplace confusion of absolute and supreme authority in characterizing sovereignty has led to the justification of ongoing territorial disputes and the resultant negative local, regional and international consequences. There are attempts to mitigate this view by “moralizing” sovereignty.²⁷ Although these attempts may have good intentions, they miss the point. The issue is not whether sovereignty allows for limitations. Sovereignty always has them. The central issue is the way in which these limitations are used by some agents to dominate their peers. The central point in dismantling absoluteness in sovereignty has not to do with sovereignty itself (because sovereignty always accepts limitations) but with the way in which sovereignty is valued.

The previous section demonstrated that sovereignty may have limitations by means of rights and no-rights, privileges, immunities and other factors. Therein, a sovereign state may willingly accept self-imposed limitations or those imposed by others, the context or environment.²⁸ Neither self-imposed nor externally imposed limitations to sovereignty allow for arbitrary interference, or domination. This is the crucial point in terms of the absoluteness of sovereignty. The aforementioned limitations have to be of a special nature. They must not imply domination: they have to allow sovereign states to be at the same time sovereign over their respective territory to the extent they do not interfere with the interests of the other or that of their population as and when they wish.

The notion of absolute sovereignty has historical origins.²⁹ The legal, social, religious and political chaos in Europe placed Bodin and Hobbes at the time and place to develop the idea and attract supporters. However, even there and then, both thinkers accepted that so-called absoluteness included limitations.³⁰ The reason then and now is the same: sovereignty is simply the machine behind imperialism.³¹ History shows many examples in which central sovereign states (for example, in the colonial era, the United Kingdom, France and Spain) used sovereignty as an absolute concept in order to impose their law, policies and culture onto other societies. The imperial powers

2011); Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty: The Early Years,” *International Journal for the Semiotics of Law* 27 (2014): 645–664; Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty: The Middle Ages,” *International Journal for the Semiotics of Law* 28 (2015): 235–250.

27 Thomas W. Pogge, “Cosmopolitanism and Sovereignty,” *Ethics* 103 (1992): 48–75; Simon Caney, “Cosmopolitanism and the Law of Peoples,” *The Journal of Political Philosophy* 10 (2002): 95–123; Andrew Kuper, “Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons,” *Political Theory* 28 (2000): 640–674.

28 For the classification of self-imposed and externally imposed limitations see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 4.

29 For more details about the history behind sovereignty see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 2.

30 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017).

31 Michael Hardt and Antonio Negri, *Empire* (Cambridge MA: Harvard University Press, 2000), 87.

always recognized each other as sovereign, but in most cases they justified their domination over other societies so obviously their claim to domination was relative and not absolute. This was an axiological choice: the concept of sovereignty did not necessarily imply absoluteness in the form of domination. Sovereignty so characterized has to do with the agenda of some sovereign states and the way in which they valued sovereignty in order to impose their ways. Currently, the United Kingdom, the United States and France are among the international agents that claim they are aiding other states, including failed and pseudo-states, when in law and politics they are interfering with their sovereign peers' territory, population and government as and when they wish. This has nothing to do with sovereignty itself but with how central, powerful states value sovereignty as a means to legalize and legitimize what in other times would have been classed as colonialism. The idea of domination is directly linked to the notion of absolute sovereignty and imperialism.

To capture how sovereignty (factually and normatively) may be supreme yet not absolute (sovereignty does not imply any absoluteness; this is an axiological choice: only the claim of the ones who aim to dominate somebody else and aim to justify their agenda legally and politically) this section introduces the notions of domination and non-domination.³²

In principle, domination means the ability or capacity³³ somebody has to exercise power arbitrarily³⁴ over others, regardless of the consequences for the others.³⁵ Therein, non-domination implies the ability or capacity for somebody's affairs not to be arbitrarily interfered by anybody else. When a sovereign state dominates another sovereign state, there is arbitrary power. Conversely, when a sovereign state willingly accepts limitations that another sovereign state imposes, there is non-domination. That is because, in the second case, both sovereign states conduct their bilateral relationship based on republican liberty that, unlike negative liberty,³⁶ understands freedom as non-domination.³⁷ Arbitrary limitations are not a viable option in non-

32 For the author's more detailed previous work on this point see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 4.

33 The author distinguishes between ability and capacity only in the sense they may have been naturally in the subject, acquired or developed.

34 By arbitrary the author means as and when the subject wishes or without any other control than the subject himself. The term discretionary is the more general notion, that an arbitrary decision presupposes discretion, but that not every discretionary decision is taken arbitrarily (for there can be very good reasons that motivate such a decision).

35 For the purpose of this monograph, the fact that the consequences may be positive or negative for the recipient does not change the arbitrary nature of the original interference. There is no teleological justification for an arbitrary choice. The original interference is defined as arbitrary or not on its own merits.

36 For the distinction between positive and negative liberty see Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969); Matthew H. Kramer, "On the Unavoidability of Actions: Quentin Skinner, Thomas Hobbes, and the Modern Doctrine of Negative Liberty," *Inquiry* 44 (2001): 315–330; Philip Pettit, "A Definition of Negative Liberty," *Ratio* 2 (2006): 153–168; and many others.

37 See Mark R. Reiff, *Exploitation and Economic Justice in the Liberal Capitalist State* (Oxford: Oxford University Press, 2013), 288–289, and in partic. fn. 24 and 25. For

domination for the interrelation between states, regardless of whether they are weak or strong, least or most advantaged.

The distinction between domination and non-domination, arbitrary and non-arbitrary in relation to sovereignty has to do with the factual and normative views. It would be futile to count on public international law that acknowledges sovereign equality of the states when in fact strong or advantaged states do as they wish with their weaker or least advantaged peers. The axiological choice of understanding domination as a defining feature in characterizing sovereignty shifts from better to good, from what is best only to the strong or advantaged states to what is good for the equal treatment of states.

Sovereign states may cooperate with their peers; they may even enter into commitments and limit factually and normatively their own sovereignty. By means of an axiological choice, factual and normative sovereignty may be restricted or enhanced. Sovereign states have factual and normative limitations, and though they restrict their sovereignty in some ways, not all limitations imply a diminishing of each state's sovereignty. Domination is a particular kind of limitation (an axiological choice) that implies arbitrary power over someone else—in this case, another state, pseudo-states and failed states. Although sovereignty has limitations, none of them can be a subterfuge for domination.

Whether limitations diminish or enhance sovereignty is an axiological choice. If sovereign states conduct their interactions or interrelations under the idea of non-domination, the result will be that no state is entitled to restrict the sovereignty of any other state in an arbitrary manner. For instance, joint ventures may result in bettering every agent's relative position. These limitations, as well as being a duty to others, greatly increase one's overall freedom of action: by refraining from injuring others, one makes co-operation with others possible, and can then make possible all kinds of things that were previously impossible.

Sovereignty and self-determination

At first glance, sovereignty and self-determination³⁸ seem to be at odds. While sovereignty centers on the state, self-determination focuses on people.³⁹ Self-determination may jeopardize one of the elements that integrates a sovereign state, such as territory, by giving pre-eminence to another element such as population. In this view,

republican liberty as non-domination see Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010), 155–156.

38 The bibliography about self-determination is vast. For an overview in law see A. Cobban, *The Nation State and National Self-Determination* (London: Collins, 1969); A. Rigo Sureda, *The Evolution of the Right of Self-Determination* (Leiden: Sijthoff, 1973); N. Ghanea and A. Xanthaki, eds., *Minorities, Peoples, and Self-Determination* (Leiden: Nijhoff, 2005); I. Primoratz and A. Pavkovic eds., *Identity, Self-Determination and Secession* (Aldershot: Ashgate, 2006); and Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2007).

39 P.H. Kooijmans, "Tolerance, sovereignty and self-determination," *Netherlands International Law Review* 43:2 (1996): 211–217.

self-determination compromises the public international law principle of territorial integrity. Consequently, territorial disputes often include situations such as Catalonia, in which at least part of the population of a sovereign state wishes to have a different government and, therefore, divide the territory; or cases like Gibraltar and the Falkland/Malvinas Islands where populations are in a legal and political limbo because they wish to exercise self-determination while a sovereign state denies them that right; or disputes like Kashmir, where populations under the sovereignty of one state wish to exercise self-determination and join another one.

This is a misunderstanding because sovereignty includes limitations and, therefore, can embrace cooperative arrangements that may imply solutions other than dismemberment of the territory. In a similar vein, self-determination may lead to solutions other than secession. In order to make these points clear and demonstrate how sovereignty and self-determination are not necessarily opposed, this section explores self-determination in law and politics.

There are many public international law documents that refer to self-determination. As an example Article 1 (2) of the UN Charter states among its purposes:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...

UN General Assembly Resolution 1514 Article 2 states:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

UN General Assembly Resolution 2649 Article 1:

Affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal.

UN General Assembly Resolution 2625 Article c states:

The principle of equal rights and self-determination of peoples...

These documents demonstrate that self-determination is globally recognized as an imperative, binding principle by which people can freely determine their political status which, consequently, international society must acknowledge. Although in principle self-determination appears to be a simple, straight forward notion, it brings several hermeneutical problems. Among them, the ones that are relevant to territorial disputes are: dismemberment of territory, the right to determine political status, and the concept of “people.” The sub-sections below explore these points.

Dismemberment of territory

The people's right to decide their political status may result in the physical dismemberment of the state. One of the elements that integrate the sovereign state, its territory, may have to be divided. In that case, self-determination moves against the public international principle of territorial integrity.⁴⁰ Public international law provisions that enshrine the principle of territorial integrity include Article 2 (4) UN Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

UN General Assembly Resolution 1514 Art. 6:

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

Ongoing territorial disputes such as the Falkland/Malvinas Islands and Gibraltar are examples of the tension between self-determination and territorial integrity. On the one hand, Argentina and Spain claim that the Falkland/Malvinas Islands and Gibraltar, respectively, are part of their sovereign territory and, therefore, that the inhabitants have no right to self-determination. The United Kingdom rejects this interpretation by distinguishing territorial integrity from geographic integrity.⁴¹

Unsurprisingly, there is scholarly literature supporting both the pre-eminence of self-determination over territorial integrity and vice-versa.⁴² In relation to

40 For a detailed analysis of the concept of territorial integrity see Christian Marxsen, "Territorial Integrity in International Law – Its Concept and Implications for Crimea," *Heidelberg Journal of International Law* 75:1 (2015): 7–26. See also S. Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill: Queen's University Press, 2002), 158–164.

41 Remarks by Mr Luard, 22 UN GAOR C.4 (1741) 409; UN Doc. A/C.4/SR1741 (1967). For a current view of different opinions in relation to the Falkland/Malvinas Islands, Gibraltar and western Sahara see "Territorial Integrity, Self-Determination Focus of Debates on Western Sahara, Falkland Islands (Malvinas), Gibraltar, as Decolonization Seminar Continues," United Nations, Meetings Coverage, 03/May/2019 available at <https://www.un.org/press/en/2019/gacol3334.doc.htm> accessed 18/May/2019.

42 For an analysis of the relationship between self-determination and territorial integrity see Miguel Antonio Sanchez, "Self-Determination and the Falkland Islands Dispute," *Columbia Journal of Transnational Law* 21 (1983): 557–584. For self-determination overriding territorial integrity see Thomas M. Franck and Paul Hoffman, "The Right to Self-Determination in Very Small Places," *New York University Journal of International Law and Politics* 8 (1975): 331; Emerson, "Self-Determination," *American Journal of International Law* 65 (1971), 464; Advisory Opinion by Judge Dillard on Western Sahara, International Court of Justice, 12, 120 n.1. (Advisory Opinion of 16/October/1975). For territorial integrity overriding self-determination see Clark,

territorial disputes the choice between self-determination and territorial integrity shows a similar experience, with some cases suggesting pre-eminence to the former (West Irian, East Timor, Belize and Western Sahara) and some others to the latter (Falkland/Malvinas Islands and Gibraltar).⁴³ Consequently, self-determination does not necessarily override territorial integrity.⁴⁴

Whether to apply self-determination or territorial integrity to a territorial dispute depends on interpreting, weighting and balancing different elements particular to that dispute.⁴⁵ Scholarly literature and public international law seem to suggest that self-determination may take priority over territorial integrity unless, for example, an administering authority attempts to use it as a means to an end—e.g. in the case of “plantations.”⁴⁶ It is clear that the choice between self-determination and territorial integrity is as complex as it is controversial.

The right to determine the political status

Self-determination may result in secession⁴⁷ but it does not need to. Public international law enables people to choose their political status by means of self-determination. The political status in any community may imply independence and the formation of a new sovereign state as well as other outcomes such as administration, integration, free association, or shared sovereignty.⁴⁸

Secession is an *ultimum remedium*⁴⁹ in situations in which the sovereign state and the population that wishes to secede are in conflict. Examples such as Kurdistan and Catalonia illustrate this point. Depending on the way the governments of Iraq and Spain deal with the interests of Kurds and Catalans, the central government may not acknowledge the right of these populations to secede through self-determination.

“The Decolonization of East Timor and the United Nations Norms on Self-Determination and Aggression,” *Yale Journal of World Public Order* 7:2 (1980): 30.

43 For details about each of these cases, including factual and legal analysis, see S. K. N. Blay, “Self-Determination Versus Territorial Integrity in Decolonization,” *NYU Journal of International Law and Politics* 18 (1986): 441–472.

44 J. Robert Maguire, “The Decolonization of Belize. Self-Determination v. Territorial Integrity,” *Virginia Journal of International Law* 22:4 (1982): 849–881, 871.

45 Hurst Hannum, *Autonomy, Sovereignty, and Self-determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

46 S. K. N. Blay, “Self-Determination Versus Territorial Integrity in Decolonization,” *NYU Journal of International Law and Politics* 18 (1986): 441–472.

47 For a comprehensive list of scholarly legal literature on secession see Mary D. Hood, *Bibliography on Secession and International Law* (Santa Clara, California: Santa Clara University, School of Law, 2001), available at <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1042&context=facpubs> accessed 16/May/2019.

48 For details about these and other remedies to sovereignty conflicts see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 5.

49 P.H. Kooijmans, “Tolerance, sovereignty and self-determination,” *Netherlands International Law Review* 43:2 (1996): 211–217.

Secession may or may not be justifiable.⁵⁰ However, although public international law includes self-determination, there is no international legal norm either prohibiting or permitting secession.⁵¹ People who are oppressed or whose interests are not represented by their state's government may use self-determination to secede from the mother state. There is a distinction here between external and internal self-determination.⁵² While people who are oppressed, for example, have the right to external self-determination and, therefore, can secede from the mother state, people who are not in danger, and whose interests are not ignored by their government, may use internal means to improve their situation: obtaining self-determination by means of a certain degree of autonomy.

The ways in which self-determination and secession are characterized and applied are fundamental in the resolution of territorial disputes. When there is a territorial dispute and the claiming parties only disagree about their rights over a territory, self-determination in the form of secession is not an advisable solution. It goes against the principle of territorial integrity. Second, it guarantees the disagreement of the agent left outside the arrangement. Third, and most importantly, as long as there is no oppression, there are other remedies that can secure a permanent and peaceful understanding among all the involved agents.

People

Public international law related to self-determination acknowledges that "people" have the right to choose their political status. The term "people" is as simple as it is problematic. Scholarly literature in law recognizes that there is a limit inherent in the nature of language to the guidance which general language can provide. Any natural languages, like English, are open-textured.⁵³ The term "people" in public international law referring to self-determination is an example of the vagueness and ambiguity embedded in the language of legal norms. In simpler terms, any word (as also happens in legal vocabulary) can have several meanings. For example, a law prohibiting "vehicles" in parks would certainly apply to cars and trucks but the interpreter may wonder about its application to bicycles and wheelchairs.

50 Allen Buchanan, "Toward a Theory of Secession," *Chicago University Press* 101 (1991): 322–342. See also See Robert W. McGee, "A Third Liberal Theory of Secession," *The Liverpool Law Review* XIV (1992): 45–66. McGee analyses Beran's *A Liberal Theory of Secession* and Birch's *Another Liberal Theory of Secession*, arguably the first two publications in contemporary times that refer to the idea of secession in detail. In particular, Beran mentions previous writers on the topic like Grotius and Pufendorf. Refer to Harry Beran, "A Liberal Theory of Secession," *Political Studies* XXXII (1984): 21–31; and Anthony H. Birch, "Another Liberal Theory of Secession," *Political Studies* XXXII (1984): 596–602.

51 Lee C. Buchheit, *Secession: The Legitimacy of Self-determination* (New Haven, Conn.: Yale University Press, 1978); Minasse Haile, "Legality of secessions: The Case of Eritrea," *Emory International Law Review* 8 (1994): 479.

52 Salvatore Senese, "External and Internal Self-Determination," *Social Justice* 16:1 (35) (1989): 19–25.

53 H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1997), 126–128.

“People” in self-determination as a legal concept is hermeneutically challenging. The term itself and its components are not clearly defined. This circumstance results in arguments in many ongoing territorial disputes. For the United Kingdom, Falkland/Malvinas islanders and Gibraltarians are “people” and they have a right to self-determination, while Argentina and Spain do not recognize that the inhabitants have that right. Related concepts such “minority” and “nation” include the same interpretative issues.⁵⁴

The International Court of Justice provides some clarification in the Western Sahara Advisory Opinion, that the right of that population to self-determination is assumed; in the East Timor case (Portugal v. Australia), that both parties recognize that the people of East Timor have the right to self-determination; and the Israeli Wall Advisory Opinion, that the rights of the Palestinian people include self-determination.⁵⁵

Evidently, “people” in the context of self-determination is a contested concept. Public international law does not include any legal norm, either legislation or case law, with a clear, unequivocal and prescriptive definition. Given that situation, accepting that a group of individuals constitute a legally defined “people” guarantees, unsurprisingly, controversy in the context of a territorial dispute. However, a cooperative approach like the one shown in the East Timor case clearly demonstrates that when the claiming agents in a dispute are willing to leave aside their own local, regional and international agendas to achieve a permanent and peaceful solution, the open-textured term “people” is not an obstacle.

The right to self-determination is complex. There are people around the globe intending to use the public international law institution to achieve different degrees of autonomy. However, public international law does not offer a precise characterization of the right to self-determination or its key defining elements. Self-determination may threaten the constitutive elements of a sovereign state by the division of its population and dismemberment of its territory, so it goes against a principle of public international law. Despite these preliminary setbacks, from the above brief account, it is still possible to draw some positive conclusions:

- Self-determination enables people to choose their political status.
- Self-determination is an *erga omnes* right.

54 For example, the case of indigenous people. See Elena Cirkovic, “Self-Determination and Indigenous Peoples in International Law,” *American Indian Law Review* 31:2 (2006/2007): 375–399; Benedict Kingsbury, “Indigenous People as an International Legal Concept,” in R. H. Barnes, A. Gray and B. Kingsbury, eds., *Indigenous Peoples of Asia* (Ann Arbor, Mich.: Association for Asian Studies, 1995); and many others. For a very recent study see Gary N. Wilson and Per Selle, *Indigenous Self-Determination in Northern Canada and Norway*, IRPP Study 69 (Montreal: Institute for Research on Public Policy, 2019) available at <http://irpp.org/wp-content/uploads/2019/02/Indigenous-Self-Determination-in-Northern-Canada-and-Norway.pdf> accessed 17/May/2019.

55 For more details see Daniel Thürer and Thomas Burri, *Self-Determination*, Max Planck Encyclopedia of Public International Law (Oxford: Oxford University Press, 2008), available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873> accessed 17/May/2019.

- Self-determination does not necessarily result in secession.
- Secession is an extreme, ultimate means to resolve a dispute that includes a party claiming self-determination.
- Self-determination can be external or internal.
- External self-determination implies secession in cases in which people are being oppressed by their government and/or their interests are continuously overridden or ignored.
- Internal self-determination implies any other instance in which people are not being oppressed but they wish a degree of autonomy in relation to their state's government.
- Internal self-determination includes any degree of autonomy such as free association, integration, or shared sovereignty.
- "People" as a concept part of the right to self-determination is defined by internal and external elements.
- "People," internally defined, has to do with characteristics that make the individuals in the group somehow homogeneous. The minimum level of homogeneity seems to be the common wish to decide their political status. Some other elements could be relevant in law and in fact. For example, in law, it would be significant whether members of the group are legally part of that community, whether they are nationals of the state according to the national legal order. In facts, it could be significant whether all members share a common social, cultural, historical, ethnic, and linguistic background.
- "People," externally defined, has to do with the way the group is oppressed (or not) by the state's government and/or how their wishes are continuously ignored.
- "Plantations" or populations that were settled by formerly colonial powers in previously inhabited or uninhabited territories⁵⁶ are an exceptional case that should be explored in detail, in law and in fact, taking all the claiming agents and the above considerations into account.

Conclusion

This chapter assessed the concepts of sovereignty and self-determination to demonstrate that the two concepts are inclusive. Sovereignty includes factual and normative limitations that, depending on how they are valued by the interpreter, may enable the cooperation of different states without compromising their sovereignty. In the same vein, self-determination may result in secession and, therefore, exclude different agents from arriving at a mutually beneficial agreement, but it

56 The author refers to "previously inhabited or uninhabited territories" intentionally because it may be epistemologically impossible to demonstrate this circumstance. For an extensive analysis on this point see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 6; in particular "Why 'just acquisition' cannot work," 117–120.

does not need to. Indeed, as sovereignty may foster collaboration between sovereign states, self-determination may enhance internal autonomy.

These ways of understanding sovereignty and self-determination shift the focus from territory to people. This shift in focus is central to solving territorial disputes. While sovereignty territorially defined may be collectively exhaustive and mutually exclusive, the acknowledgment of factual and normative limitations in sovereignty without any kind of domination can enable a government to prioritize the interests of its population. Since self-determination centers on people, implies different degrees of autonomy and does not necessarily mean secession (which requires oppression by the government, an internal way of domination), public international law empowers populations to freely decide what is best for them even in cases of territorial disputes.

Sovereignty and self-determination may contribute to manipulative practices as in the former Yugoslavia, Rwanda and Chechnya.⁵⁷ However, sovereignty and self-determination may as well draw together agents with opposing claims over territorial disputes. If territorial disputes can be centered on elements other than territory, sovereignty can be shared in a way that is beneficial to all the claiming agents, and self-determination may lead to solutions other than secession, there is room for territorial disputes to be resolved by cooperative approaches.

Bibliography

- Bartelson, Jens. *A Genealogy of Sovereignty*. Cambridge: Cambridge University Press, 1995.
- Beran, Harry. "A Liberal Theory of Secession." *Political Studies* XXXII (1984): 21–31.
- Berlin, Isaiah. *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.
- Birch, Anthony H. "Another Liberal Theory of Secession." *Political Studies* XXXII (1984).
- Blay, S. K. N. "Self-Determination Versus Territorial Integrity in Decolonization." *NYU Journal of International Law and Politics* 18 (1986): 441–472.
- Bodin, Jean. *The Six Bookes of Commonweale*. London: Impenfis G. Bishop, 1903.
- Brown, Kirby. "Sovereignty." *Western American Literature* 53:1 (2018): 81–89.
- Buchanan, Allen. *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press, 2007.
- Buchanan, Allen, "Toward a Theory of Secession." *Chicago University Press* 101 (1991): 322–342.
- Buchheit, Lee C. *Secession: The Legitimacy of Self-Determination*. New Haven, Connecticut: Yale University Press, 1978.
- Caney, Simon. "Cosmopolitanism and the Law of Peoples." *The Journal of Political Philosophy* 10 (2002): 95–123.
- Cirkovic, Elena. "Self-Determination and Indigenous Peoples in International Law." *American Indian Law Review* 31:2 (2006/2007): 375–399.
- Clark, Roger S. "The Decolonization of East Timor and the United Nations Norms on Self-Determination and Aggression." *Yale Journal of World Public Order* 7:2 (1980): 30.
- Cobban, A. *The Nation State and National Self-Determination*. London: Collins, 1969.

57 P. H. Kooijmans, "Tolerance, Sovereignty and Self-determination," *Netherlands International Law Review* 43:2 (1996): 211–217.

- Dreher, Axel, Nunnenkamp, Peter and Thiele, Rainer. "Does US Aid Buy UN General Assembly Votes?" *Public Choice* 136 (2008): 139–164.
- Emerson, Rupert. "Self-Determination." *American Journal of International Law* 65 (1971): 464.
- Franck, Thomas M. and Hoffman, Paul. "The Right to Self-Determination in Very Small Places." *New York University Journal of International Law and Politics* 8 (1975): 331.
- Ghanea, N. and Xanthaki, A., eds. *Minorities, Peoples, and Self-Determination*. Leiden: Nijhoff, 2005.
- Glanville, Luke. "The Myth of 'Traditional' Sovereignty." *International Studies Quarterly* 57 (2013): 79–90.
- Goldschmidt, Werner. *Introducción Filosófica al Derecho*. Buenos Aires: Depalma, 1987.
- Haile, Minasse. "Legality of Secessions: The Case of Eritrea." *Emory International Law Review* 8 (1994): 479–499.
- Hannum, Hurst. *Autonomy, Sovereignty, and Self-determination: The Accommodation of Conflicting Rights*. Philadelphia: University of Pennsylvania Press, 1996.
- Hardt, Michael and Negri, Antonio. *Empire*. Cambridge MA: Harvard University Press, 2000.
- Hart, H.L.A. *The Concept of Law*. Oxford: Oxford University Press, 1997.
- Hohfeld, Wesley Newcomb. "Fundamental Legal Conceptions as Applied in Judicial Reasoning." *Yale Law Journal* (1917): 710–770.
- Hohfeld, Wesley Newcomb. "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning." *Yale Law Journal* (1913): 16–59.
- Hood, Mary D. *Bibliography on Secession and International Law*. Santa Clara, California: Santa Clara University, School of Law (2001).
- Kalmo, Hent and Skinner, Quentin, ed. *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*. Cambridge: Cambridge University Press, 2010.
- Kelsen, Hans. "Absolutism and Relativism in Philosophy and Politics." *The American Political Science Review*. 42:5 (1948): 906–914.
- Kelsen, Hans. "Law, State and Justice in the Pure Theory of Law." *The Yale Law Journal* 57:3 (1948): 377–390.
- Kingsbury, Benedict. "Indigenous People as an International Legal Concept," in: R. H. Barnes, A. Gray and B. Kingsbury, eds. *Indigenous Peoples of Asia*. Ann Arbor, Michigan: Association for Asian Studies, 1995.
- Kooijmans, P.H. "Tolerance, Sovereignty and Self-determination." *Netherlands International Law Review* 43:2 (1996): 211–217.
- Kramer, Matthew H. "On the Unavoidability of Actions: Quentin Skinner, Thomas Hobbes, and the Modern Doctrine of Negative Liberty." *Inquiry* 44 (2001): 315–330.
- Kuper, Andrew. "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons." *Political Theory* 28 (2000): 640–674.
- Lalonde, S. *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis*. McGill: Queen's University Press, 2002.
- Lovett, Frank. *A General Theory of Domination and Justice*. Oxford: Oxford University Press, 2010.
- MacCormick, Neil. *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. Oxford: Oxford University Press, 1999.
- Maguire, J. Robert. "The Decolonization of Belize. Self-Determination v. Territorial Integrity." *Virginia Journal of International Law* 22:4 (1982): 849–881.
- Martin, Elizabeth A. and Law, Jonathan, eds. *A Dictionary of Law*. Oxford: Oxford University Press, 2006.

- Marxsen, Christian. "Territorial Integrity in International Law – Its Concept and Implications for Crimea." *Heidelberg Journal of International Law* 75:1 (2015): 7–26.
- McGee, Robert W. "A Third Liberal Theory of Secession." *The Liverpool Law Review* XIV (1992): 45–66.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor & Francis Group, 2017.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Middle Ages." *International Journal for the Semiotics of Law* 28 (2015): 235–250.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Early Years." *International Journal for the Semiotics of Law* 27 (2014): 645–664.
- Núñez, Jorge E. "The Origins of Sovereignty in the Hellenic World," in *International Law, Conventions and Justice*, David A. Frenkel, ed. Athens: ATINER, 2011.
- Pettit, Philip. "A Definition of Negative Liberty." *Ratio* 2 (2006): 153–168.
- Picker, G. "Sovereignty Beyond the State: Exception and Informality in a Western European City." *International Journal of Urban and Regional Research* 43:3 (2019): 576–581.
- Pogge, Thomas W. "Cosmopolitanism and Sovereignty." *Ethics* 103 (1992): 48–75.
- Primoratz, I. and Pavkovic, A., eds. *Identity, Self-Determination and Secession*. Aldershot: Ashgate, 2006.
- Reiff, Mark R. *Exploitation and Economic Justice in the Liberals Capitalist State*. Oxford: Oxford University Press, 2013.
- Reisman, W. Michael "The Constitutional Crisis in the United Nations." *The American Journal of International Law* 87 (1993): 83–100.
- Sanchez, Miguel Antonio. "Self-Determination and the Falkland Islands Dispute." *Columbia Journal of Transnational Law* 21 (1983): 557–584.
- Senese, Salvatore "External and Internal Self-Determination." *Social Justice* 16:1(35) (1989): 19–25.
- Sureda, A. Rigo *The Evolution of the Right of Self-Determination*. Leiden: Sijthoff, 1973.
- Thürer, Daniel and Burri, Thomas. *Self-Determination*. Max Planck Encyclopedia of Public International Law, Oxford: Oxford University Press, 2008.
- Vincent, Jack E. "Predicting Voting Patterns in the General Assembly." *The American Political Science Review* 65 (1971): 471–498.
- Volk, Christian. "The Problem of Sovereignty in Globalized Times." *Law, Culture and the Humanities* February (2019).
- Walker, Neil, ed. *Relocating Sovereignty*. London and New York: Routledge, 2018.
- Walker, Neil. "Sovereignty Frames and Sovereignty Claims." University of Edinburgh, School of Law, Working Papers, 2013.
- Wang, T. Y. "U.S. Foreign Aid and UN Voting: an Analysis of Important Issues." *International Studies Quarterly* 43 (1999): 199–210.
- Weber, Cynthia. *International Relations Theory: A Critical Introduction*. Abingdon: Routledge, 2010.
- Wilson, Gary N. and Selle, Per. *Indigenous Self-Determination in Northern Canada and Norway*. IRPP Study 69. Montreal: Institute for Research on Public Policy, 2019.



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4 Territorial disputes

Introduction

This chapter considers how and why territorial disputes start, and why some continue endlessly while others reach a solution. Although relevant, the usual explanations for these differences, such as strategic location of the territory, its economic value, homogeneity with bordering minorities or a goal of political unification fail to provide a satisfactory and comprehensive explanation. The chapter examines how the domestic context influences the regional and international dimension, and vice-versa. The hypothesis is that state leaders take into consideration external elements pertinent to territorial disputes as well as the internal situation, which links directly to their domestic political prestige.

Some territorial disputes escalate into conflict, usually when the claiming state threatens or resorts to the use of coercion (political, military, financial, etc.) to obtain the sovereignty over the disputed territory. This chapter argues that while international factors may explain the escalation into conflict they do not necessarily explain the reasons that bring about the disputes in the first place. Conversely, local and regional elements that give birth to these disputes are not sufficient conditions for their escalation. Empirical data supports these claims.

The pervasive nature of territorial disputes

A territorial dispute is a disagreement between states about the sovereignty over territory (land or water). Any territorial dispute presents a conflict of interests.¹ For example, Israelis and Palestinians; Argentineans, Britons and Falkland/Malvinas islanders; Indians, Pakistanis, Chinese and Kashmiris; Crimeans, Russians and Ukrainians and many others have both common and conflicting interests

1 For the notions of identity and conflict of interest the author follows Rawls: “there is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share.” See John Rawls, *A Theory of Justice*, Revised Edition (Oxford: Oxford University Press, 1999), 4.

that characterize each individual territorial dispute. Although each claiming party consists of many different individuals with different interests, each of these claiming parties has as a collective group a common interest: exclusive sovereignty over the disputed territory (Jerusalem, Gaza, West Bank; Falkland/Malvinas Islands; Kashmir; Crimea). The disputed territory is the center of a particular conflict of interest.

Each territorial dispute has its own characteristics.² However, legal and political theory offer elements to generalize some of the most relevant features common to most or all territorial disputes. There are many views based on some elements that characterize a determined territorial dispute or a group of them: geostrategic location of the territory, leaders' popularity, minorities, ethnicity and many others.³ Dzurek,⁴ however, includes several features relevant to a wider range of territorial disputes, characterizing their prominence based on intensifying factors, magnitude, and nature:

- Intensifying factors: ethnic conflict, recent violence, historic animosity, inability of claiming governments to control developments along the border, or taking unpopular initiatives, and third-party involvement.
- Magnitude: size of area in question, number of inhabitants, natural resources, access to trade or invasion routes, and number of casualties.
- Nature: land or water, number of claiming parties, legal framework, status of the negotiation, and type.

At first glance, territorial disputes revolve around at least one of the components of a sovereign state: population (minorities, ethnic conflicts, etc), territory (natural resources, borders, etc.) and government (leaders' popularity, applicable law, etc). This is a simplistic theoretical frame. In reality, territorial disputes are often complex and include several of these features. Hence, to assess only one or a few of these features in a territorial dispute leaves aside other elements that contribute towards their persistent nature. For example, to assume the Israeli-Palestinian difference is based only on religious, sociological and historical elements and local actors is to omit other very relevant features such as the pay-off to leaders' prestige that an ongoing conflict guarantees as well as regional and international actors that are more interested in a *status quo* than a peaceful and permanent solution.

2 Chapters 6, 7 and 8 explore individual territorial disputes in more detail.

3 For a summary of several works in academic history and political science literature see "Approaches to Solving Territorial Conflicts: Sources, Situations, and Suggestions" (Atlanta, The Carter Center, 2010); available at https://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/solving_territorial_conflicts.pdf accessed 20/May/2019.

4 Dzurek, Daniel J., "What Makes Some Boundary Disputes Important?" *IBRU Boundary and Security Bulletin* 7:4 (Winter 1999–2000): 83–95; Dzurek updated and expanded this work in the 2005 article "What Makes Territory Important: Tangible and Intangible Dimensions," *GeoJournal* 64 (2005): 263–274.

The sections that follow first refer to the kinds of claims any challenger may present in a territorial dispute. They range from cultural and historical entitlement to effective control of the territory. Each claim is tightly linked to at least one of the elements that integrate a state: population, territory and government. Second, there are some common features to territorial disputes. These common features are issues at stake or pre-existing conditions that may result in the origin and escalation of the dispute, and contribute to determining whether it can be resolved. Finally, to complete the analysis of territorial disputes it is crucial to introduce the domestic, regional and international contexts.

Categories of claims

After reviewing the ways in which sovereignty can be attained over a territory according to public international law—by occupation, prescription, cession, accretion and conquest—Burghardt⁵ explains that claims over territories may also be outside the legal order and based on non-legal elements. Scholars group non-legal claims to territory in many ways.⁶ However, Burghardt includes the most comprehensive classification of claims to territory based on effective control, history, culture, territorial integrity, economy, elitism and ideology.

Effective control

In public international law, effective control over a territory is directly related to acquisition and maintenance of the territorial title. Developed by international case law,⁷ effective control implies the continued and exclusive display of power and authority over a territory and its population. In other words, the government is the sole and ultimate law-maker in that territory and for that population. Cases range from already established states arguing over the same territory—e.g. the dispute between Morocco and Algeria over the Sahara⁸—to newly formed states,

5 Andrew F. Burghardt, "The Bases of Territorial Claims," *Geographical Review* 63:2 (1973): 225–245. See also Brian Taylor Sumner, "Territorial Disputes at the International Court of Justice," *Duke Law Journal* 53 (2004): 1779–1812; available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1227&context=dlj>, accessed 23/May/2019. Sumner incorporates legal claims into Burghardt's classification.

6 Norman Hill, *Claims to Territory in International Law and Relations* (London, New York and Toronto: Oxford University Press, 1945); Norman John Greville Pounds, *Political Geography* (New York: McGraw-Hill, 1972); Robert Strausz-Hupé and S. T. Possony, *International Relations in the Age of the Conflict Between Democracy and Dictatorship* (New York: McGraw-Hill, 1954).

7 Island of Palmas case (1928), Legal Status of Eastern Greenland (1933), Minquiers and Ecrehos case (1953), Burkina Faso-Mali case (1986) and Nicaragua-Colombia case (2012).

8 For a detailed account of the conflict see Tony Hodges, *Western Sahara: The Roots of a Desert War* (Westport, CT: Lawrence Hill and Company, 1983); and John Damis, *Conflict in Northwest Africa: The Western Sahara Dispute* (Stanford, California: Hoover Institution Press, 1983).

like the post-colonial Latin American states, claiming control over territories once under colonial rule.⁹

Historical claim

The claiming parties base their claim on past facts related to the disputed territory and on their intention to be its sovereign. These past facts can be related to actual occupation and effective control. There may be controversy, however, when a claiming agent does not occupy the disputed territory but have continuously expressed their intention to do it, as with the Chagos islands.¹⁰ The claimant may have been removed or expelled from the disputed territory. Although the principle of priority,¹¹ being the first one related to the territory in some sense, is often applied to historical claims, this is not always the case. For instance, the formerly colonial powers such as England, France, Spain and Portugal made their claims based on discovery and settlement and completely ignored the rights of the original inhabitants of the lands.¹²

Cultural claim

This category includes any feature that enables people to identify themselves as part of a group, such as common ethnicity, language, religion and any other cultural characteristic that binds people together sociologically. It includes nationalisms and irredentisms, and may result in self-determination. Despite their differences, Eritrea and Northern Ireland illustrate these claims. In Eritrea, the

9 The principle of *Uti Possidetis Juris* applies. The principle responded to post-colonial territorial disputes by fixing the territorial heritage of newly-formed states after their independence. See Malcom N. Shaw, "The Heritage of States: The Principle of *Uti Possidetis Juris* Today," *British Year Book of International Law* 67 (1997): 75–154.

10 See the International Court of Justice Advisory Opinion on 25 February, 2019 in which "the Court Concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius." Summary of the Advisory Opinion; available at <https://www.icj-cij.org/files/case-related/169/169-20190225-SUM-01-00-EN.pdf> accessed 29/May/2019. For a complete overview of the Chagos Archipelago case according to the International Court of Justice see <https://www.icj-cij.org/en/case/169> accessed 29/May/2019. For a detailed historical and sociological account see Laura Jeffery, *Chagos Islanders in Mauritius and the UK: Forced Displacement and Onward Migration* (Manchester and New York: Manchester University Press, 2011). For a legal analysis see Stephen Allen, *The Chagos Islanders and International Law* (Oxford and Portland, Oregon: Hart Publishing, 2014).

11 See the Honduras Borders Case between Guatemala and Honduras (1933). The Report of International Arbitral Award states that "priority in settlement in good faith would appropriately establish priority of right." (*Reports of International Arbitral Awards*, Volume II, 1307–1366, 1359).

12 Robert J. Miller, "The Doctrine of Discovery: The International Law of Colonialism," *The Indigenous People's Journal of Law, Culture and Resistance* 5:1 (2019): 35–42.

Muslims support independence while the Christians seek to join Ethiopia.¹³ In Northern Ireland, most unionists are Protestants whereas most nationalists have a Roman Catholic background.¹⁴

Territorial integrity

This claim is based on the geographical location of the territory in question.¹⁵ Physical proximity of a sovereign state and a disputed territory is sufficient condition for this kind of claim. There are many examples, including: the Falkland/Malvinas Islands and the Argentinean view, Gibraltar and Spain, and the former Yugoslavia and Trieste.

Economic claim

Control of the disputed territory is necessary for the welfare of the state. The existence of natural resources in these areas is central to the wishes of the claimants and, arguably, necessary for their development. An example is the 1931 Japanese invasion of the Chinese province of Manchuria to provide raw materials for Japan's growing industry.¹⁶ It may be the case as well that a state demands territory as compensation for losses after a war. The Congress of Vienna (1814–1815) and the Treaty of Versailles (1919–1920) show many examples of European states compensating each other.

Elitist claim

A particular minority has, for whatever reason, the right or duty to control the disputed territory. Although it may appear these claims are out of fashion and belong to the past exploits of the Macedonians, Normans and Mongols, Africa still offers many questionable examples of this practice. Kenya, Swaziland, Rwanda and Mozambique show how elites can control states and are often behind territorial disputes.¹⁷

Ideological claim

A claiming party bases its arguments on purely ideological premises. Often, the argument has to do with spreading faith, such as with the Crusades. However, for

13 F. E. Stafford, "The Ex-Italian Colonies," *International Affairs* 25 (1949): 47–55, 49.

14 For an account covering 1999 to 2019 see "Northern Ireland: Current Issues and Ongoing Challenges in the Peace Process," in *Congressional Research Service*, updated 8 March 2019 and available at <https://fas.org/sgp/crs/row/RS21333.pdf> accessed 29/May/2019.

15 For a more detailed account of territorial integrity see chapter 3.

16 Charles Nelson Spinks, "Origin of Japanese Interests in Manchuria," *The Far Eastern Quarterly* 2:3 (1943): 259–271.

17 Laurel L. Rose, "African Elites' Land Control Maneuvers," *Études rurales* 163–164 (2002): 187–213.

the former Union of Soviet Socialist Republics and Nazi Germany, territorial expansion was directly linked to ideology.

Colorable claim

These kinds of claims, and others, imply that the legality and legitimacy of a claim to a territory can be very broadly or narrowly presented and interpreted. The claiming party may present justifications that include legal and non-legal elements from international case law to cultural, sociological, geographical, and other features. This is because, although the claims may be based on non-legal elements, the overarching question is legal in nature.

The most useful way to deal with the vague nature of these claims has to do with the distinction in any legal procedure between the admissibility stage and the stage in which the grounds of the action are discussed, argued, assessed and accepted or discarded. The first step in any legal procedure, its admissibility, assesses the viability of the claimant's case. Depending on the legal issues, there can be several grounds to justify the case in a legal procedure. It is only after the lawsuit is deemed admissible that the relevant court deals with the case and weighs the relevance of the grounds presented to justify the claims.

Taking into account this distinction between determining the viability of the claim and actually assessing that claim, all grounds can be characterized as a colorable claim.¹⁸ A claim includes any valid reason supporting one side in an argument over the sovereignty of the disputed territory.

That reason should be colorable enough to demonstrate that intended rights are at least sufficiently plausible to be acknowledged, and that they can be based on reasonable circumstances, such as political, historical, legal, or geographical arguments. For example, in the case of Crimea it would be unreasonable for the United States to participate in the negotiations in relation to Crimean sovereignty since it does not have any colorable claim over that territory. In a similar way,

18 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 6. A colorable claim is an expression used in the law of the United States to refer to a claim strong enough to have a reasonable chance of winning, but does not assert that the claim is certain or even likely to win. It is a non-frivolous argument either supported by reference to law or facts that may be proven in Court. The distinction between the "colorability" of a claim and a winning claim has to do with two different steps in a judicial procedure. The colorability of the claim is related to admissibility: claimant 'X' has reasonable, non-frivolous grounds for making their claim. It is only when the right to claim is acknowledged as admissible that the Court considers facts and law and decides upon the case. There are many cases that illustrate the use of this expression in Courts of the United States—e.g. *Jones v. Barnes*, 463 US 745, Supreme Court 1983; *Arbaugh v. Y & H Corp.*, 546 US 500, Supreme Court 2006; *Richardson v. United States*, 468 US 317, Supreme Court 1984; and many others. The equivalent in United Kingdom criminal proceedings would be the standard, "Is there a case to answer?". See *Regina v. Galbraith* (1981) WLR 1039. See as well Section 97, Criminal Procedure (Scotland) Act 1995 and the "no case to answer" standard.

despite their colonial ties, the participation of formerly colonial powers such as the United Kingdom, France or Spain in territorial disputes in Africa, Asia and Latin America seems inappropriate at first glance, unless there is a reasonable argument that may justify their participation.

To put it in other words, a challenger has a colorable claim if *prima facie* they have the right to claim or they appear to have a probable cause to support their intended right to claim. That is different from saying that they have a right to sovereignty. In the latter case, there is indeed an argument that has weight, but that may be later overcome by another more pressing one. So, to have a colorable claim means having at least an argument that offers surface legitimacy, but that may or may not translate into granting the challenger sovereignty over the disputed territory.

Because a colorable claim recognizes surface legitimacy to claim sovereignty to a party, it does not need to be the case that the challenger states or the population of the disputed territory have claims sufficiently equal in strength to give them roughly equal claims in respect of the disputed territory. In fact, a challenger state may have a claim that entitles it to double the weight of the other challenger state or that of the population in the disputed territory. That is because a colorable claim refers only to the right to claim sovereignty, and that is prior to any discussion about sovereignty itself. During negotiations or judicial proceedings the parties may discuss the relative weights of their claims.

As with sovereignty, territorial disputes are complex in theory and in practice because they are multi-level phenomena with different local, regional and international arguments behind them that have to do with cultural, legal, historical, sociological, geographical and financial elements, and many others. They obviously include territory as a state's component but they also are deeply rooted in population and government. Moreover, to view them as only locally defined is to miss the regional and global influences in their ongoing nature. Consequently, the aforementioned claims to territory may have to do with a wide spectrum of issues.

Some of these issues are constant or, arguably, more relevant to one, a few or most territorial disputes. The examples go from strategic location and economic value of the territory to political unification and bordering minorities. These issues are in theory considered separately. In the real world, a given territorial dispute may be a combination of two or more of these elements. Cases such as the Falkland/Malvinas Islands and Gibraltar (despite their many particularities that make them different in many aspects) offer several theoretical similarities. In both cases the strategic location and the economic value of the territory are argued by the United Kingdom, Argentina, Spain, the Falkland/Malvinas islanders and the Gibraltarians. Similarly, despite their many differences, the cases of Kashmir and Northern Ireland share common theoretical elements that help explain these disputes: political unification and bordering minorities. The international and domestic context play a part, too. Prior gain of the territory, previous settlement, prior unresolved disputes, prior loss of territory and the decolonization norm are central to many territorial disputes in Central and South America, Africa, and across Asia.

The next sections explore these issues at stake and their international, regional and domestic contexts.

Constant issues at stake

The strategic location of the territory, economy, ideology, culture, ethnicity and other bases to claim a territory are relevant to territorial disputes to different degrees. In some cases, territorial disputes present one, a few or all of these issues. It is not that they are necessary conditions for a territorial dispute to originate, but if any of these issues is present there is a higher probability of a territorial dispute.¹⁹

There are some common features in territorial disputes that can explain, at least in theory, their origin, pervasive nature and possible escalation into conflict. These common features are intertwined with the claims to territory. Depending on the issue at stake the claim may be based on geographical, ideological, legal or other considerations. By developing a more integrated approach to theory building it is possible to assess different territorial disputes under the same theoretical framework and obtain similarities and differences that can help better understand their complexity. In that sense, territorial disputes present a series of issues at stake that are common, objective or subjective features that are central in defining or somehow relevant to the existence of territorial disputes.

According to Huth,²⁰ there are some constant issues at stake: strategic location of the territory, ties to bordering minority, political unification and economic value of the territory. The paragraphs below briefly introduce each of these issues.

Strategic location of the territory

Geographical location is one of the determinants affecting relations between states and has particular importance in territorial disputes. The location of the disputed territory can define its relevance in the domestic, regional and international contexts. For example, the presence of vast energy resources and location at the center of the Middle East accounts for the Persian Gulf's geo-strategic importance and its regional importance as well as the global major powers' interest in the area. A similar situation is the strategic location of Kashmir as a link between India and Pakistan, intertwined with the economic value of the natural resources in the region. In fact, the valley was useful for the British international agenda at the time of the Empire because of its geostrategic location in relation to Russia, Afghanistan and China. Similarly, Crimea is strategically important for both Russia and Ukraine because of its location on the Black Sea.

19 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 72–85.

20 *Ibid.*, 72.

Ties to bordering minority

Cultural, ethnic, religious, sociological, or linguistic homogeneity between a state and people living close by can be a contributing factor to the origin and development of territorial disputes. The case of Northern Ireland is a clear example. Northern Ireland introduces two distinct groups, the nationalists, mainly Roman Catholics, and the unionists, mainly Protestants. The original opposition of the Protestants to an independent Irish state in which they could be a minority remains a point of discussion. Bahrain is in the center of Saudi-Iranian rivalry. The fact that in Bahrain the Sunni minority has stayed in power is also perceived as a guarantee of strategic stability. The borders of modern Africa, created by European authorities, have little regard for socio-cultural characteristics. Consequently, a typical African boundary may bring together different ethnic groups in one state or it may divide ethnically homogeneous groups.

Political unification

Directly linked to the issue about minorities is the case in which a territorial dispute includes a state aiming to incorporate (or re-incorporate) a territory with a population somehow similar to them. Former colonial powers divided societies in Africa, the Americas, Asia and the Middle East. For example, from 1820 until 1971, Britain was the dominant power in the Persian Gulf. In 1913, the Shaikh of Kuwait promised Great Britain an exclusive oil concession. The British recognized Kuwait's complete independence from the Ottoman Empire and Kuwait effectively became a British protectorate, and the British had an exclusive oil agreement. By the late 1950s, the British presence in the region was subject to growing criticism. Although Kuwait became independent in 1961, states like Iraq did not agree and their leader, General Kassem, claimed sovereignty over the whole of Kuwait. The ongoing dispute between China and Taiwan illustrates this point, too. Taiwan's government hopes to solve the South China Sea issues by multi-lateral diplomatic efforts. At the same time, China's leaders appear to regard unification with Taiwan and control of disputed land and maritime territory as part of the China Dream. Chinese leaders have voiced, for example, a declining willingness to compromise on any sovereignty or territorial issue.

Economic value of the territory

Territories rich in natural resources are subject to many territorial disputes. Despite the fact that sovereign states may already be rich in natural resources, a territory rich in natural resources seems to offer an incentive to begin or maintain territorial disputes. The cases go from states with a different level of development such as the Falkland/Malvinas Islands between Argentina and the United Kingdom to others that, despite a similar level of development, still argue over the same territory based on the existence of natural resources. The Persian Gulf and the South China Sea are examples.

Context in territorial disputes

A territorial dispute may begin and be maintained by local, regional and international factors.²¹ There are relevant elements in the international context (balance of military forces, prior gain of territory, common alliance and previous settlement), the regional context (common past, geographical location, development and natural resources) and the domestic context (prior unresolved disputes, prior loss of territory and the aftermath of decolonization).

International context

The Israeli-Palestine difference, Crimea, Kashmir, the South China Sea, the Persian Gulf and many others are self-evident examples of territorial disputes that include actors foreign to the local and regional situations. The frequent intervention in territorial disputes of strong states such as the United States and the United Kingdom that in principle have no legal or legitimate connection with the matters in dispute (and with or without the permission of local authorities) results in prolonging many differences because of the shift in power—i.e. the balance-tipping effect of having any great power intervene in a local matter. Additionally, the existence of a territorial dispute in certain areas may have a global impact on the spread of acts of terrorism, changes in oil prices, damage to the ecosystem because of the use of nuclear weapons, or threats to international peace and security. Some of the most relevant issues that have to do with the international context follow.

*Balance of military forces*²²

Although relevant, the balance of conventional military forces between the claiming party and the target does not have a determinate effect on the decision to dispute the territory.²³ The unbalanced level of military development between the challenger and the challenged agent is not reason enough to understand the initiation of territorial disputes.

Conversely, military pressure may escalate if the relative position of the challenger improves.²⁴ Militarily weak agents are less likely to initiate or escalate a confrontation.

21 Huth refers only to the international and domestic contexts: Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001). The author adds the regional context to the analysis which Huth omits.

22 For an in-depth analysis of the relationship between territorial disputes and the military see David B. Carter, "The Strategy of Territorial Conflict," *American Journal of Political Science* 54:4 (2010): 969–987.

23 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 85.

24 *Ibid.*, 114–118.

Finally, military strength is neither a necessary nor a sufficient condition for peacefully resolving territorial disputes.²⁵ However, claiming parties may compromise in situations in which military security issues are not significant or the military support of the target or other states is relevant to disputes with other agents.²⁶

Cases such as the South China Sea clearly illustrate how military power is relevant to the initiation and escalation of territorial disputes.²⁷ Additionally, the bilateral relationship between China and India in light of the Himalayan territorial dispute indicates that a balance of military power between the claimants could foster a stalemate.²⁸

Prior gain of territory

Several ongoing territorial disputes have to do with a party disputing colonial territories of the state in question. In cases where a gain of territory is at the expense of a previous settlement or military victory, the challenger may support its claim based on decolonization.²⁹

Common alliance

Military alliances between different agents that are parties in a potential territorial dispute seem to lower the chance of an actual dispute.³⁰

Once initiated, alliances have limited deterrent value in the escalation of the dispute.³¹ Conversely, the escalation of a dispute is strongly influenced by the involvement of the challenger in conflicts with other states.³² In fact, an agent involved in conflicts with other states is more likely to compromise.³³ Similarly, in cases in which the claiming agent and the target are allies, the chances for compromise are higher.³⁴

25 *Ibid.*, 155.

26 *Ibid.*, 159.

27 M. Taylor Fravel, "Power Shifts and Escalation: Explaining China's Use of Force in Territorial Disputes," *International Security* 32:3 (2007–2008): 44–83; Timothy R. Heath, "Dispute Control: China Recalibrates Use of Military Force to Support Security Policy's Expanding Focus," *The Journal of Social, Political, and Economic Studies* 43:1–2 (2018): 33–77.

28 Katherine Richards, "China–India: An Analysis of the Himalayan Territorial Dispute," *Australian Defence College, Centre for Defence and Strategic Studies* (2015); available at <http://www.defence.gov.au/ADC/Publications/IndoPac/Richards%20final%20IPSD%20paper.pdf>, accessed 25/May/2019.

29 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 88.

30 *Ibid.*

31 *Ibid.*, 118–119.

32 *Ibid.*, 119.

33 *Ibid.*, 157.

34 *Ibid.*, 160.

Previous settlement

In cases in which the agents had agreed to settle the border dispute with an agreement the chances for a territorial dispute are low even though some of the circumstances, such as relative military capabilities or regimes and leaders, may have changed.³⁵ Some areas around the world have moved from conflict to more peaceful understanding among bordering states. For example, South America, Western Europe and the Middle East show different levels of peace processes during the last century.³⁶ By the end of 1980s most of the South American states had peacefully resolved their differences.³⁷

However, in light of previous settlements, it is important to differentiate between positive and negative peace. The former implies that the use of force between the agents is very unlikely while the latter includes instances in which force may still be used although a peaceful arrangement has been reached.³⁸

*Regional context*³⁹

Geographic proximity makes political interaction more likely between states.⁴⁰ It also has an impact on bilateral and multilateral relations in regard to conflict and peace. Territorial disputes directly affect the claiming parties and may also influence other states because of the threat they pose to regional stability and security. For example, more than the disputing parties may be affected by the way in which the resources in a river that travels through several states are used; the development of nuclear weapons; local

35 *Ibid.*, 90–91.

36 Benjamin Miller, “When and How Regions Become Peaceful: Potential Theoretical Pathways to Peace,” *International Studies Review* 7:2 (2005): 229–267.

37 Jorge Mario Battaglini, “The Coexistence of Peace and Conflict in South America: Toward a New Conceptualization of Types of Peace,” *Revista Brasileira de Política Internacional* 55:2 (2012): 131–151.

38 Helevi J. Holsti, *The State, war and the State of War* (Cambridge: Cambridge University Press, 1996), 157–158; Arie M. Kacowicz, *Zones of Peace in the Third World: South America and West Africa in Comparative Perspective* (Albany: State of New York Press, 1998), 8–11; and many others. Battaglini includes zones of “hybrid” peace: areas with a) unresolved disputes that may become militarized, b) democracies that maintain relationships with neighbour states, and c) regional legal frameworks that may help resolve a dispute in a peaceful manner. See Jorge Mario Battaglini, “The Coexistence of Peace and Conflict in South America: Toward a New Conceptualization of Types of Peace,” *Revista Brasileira de Política Internacional* 55:2 (2012): 131–151, 133 and 142–145.

39 The concept of “region” is vague and open to different meanings. For this monograph, regions are territorially characterized. However, for a more detailed understanding of the term “region” see Alexander B. Murphy, “Regions as Social Construct: The Gap between Theory and Practice,” *Progress in Human Geography* 15:1 (1991): 22–35.

40 Kentaro Sakuwa, “The Regional Consequences of Territorial disputes: An Empirical Analysis of the South China Sea Disputes,” *Journal of Asian Security and International Affairs* 4:3 (2017): 316–336.

guerrilla activity; arms, drug and human trafficking; and the flow of refugees. These and other issues can generate local security externalities⁴¹ in the sense that what in principle are local threats to security, or their consequences may cross borders, resulting in bilateral or multilateral security interactions between states. In a similar way, the escalation of an arms race between states that are part in a territorial dispute can change the balance of power in the area.

The traditional geopolitical term of “shatterbelt” refers to a region where conflict may escalate.⁴² For this concept, there are some regions that are strategically important for various reasons. These areas may exhibit fragmentation in the form of ethnic issues, border disputes, questions about exploration for and exploitation of natural resources, defense and many others. Therefore, regional fragmentation gives central powers that are not necessarily part of the area the opportunity to establish alliances. Some of the most important issues related to the regional context follow.

Geographical location

Any region includes several states. In general, most of the regional states tend to be neutral about a territorial dispute or at least ignored by the claiming parties and central powers.⁴³ The states in a territorial dispute tend to be regionally important in terms of geostrategic location and defense. For example, while North Vietnam was Soviet and South Vietnam and Thailand were under the control of the United States in the 1970s, other states such as Laos, Singapore, and Indonesia were non-aligned. The South China Sea includes several situations. The Paracels are under Chinese control, while the Philippines, Taiwan, and Vietnam hold part of the Spratlies. The area is important to local, regional and international agents because it is the only major sea route connecting East Asia with Africa and Europe.⁴⁴

Resources

As in the case of geographical locations, some states are more relevant than others regionally because their territory is resource-rich. For example, Kashmir is geo-str-

41 David A. Lake, “Regional Security Complexes: A Systems Approach,” in *Regional Orders: Building Security in the New World* (University Park, PA: Pennsylvania State University, 1997): 45–67; David A. Luke, “Regional Hierarchy: Authority and Local International Order,” *Review of International Studies* 35:1 (2009): 35–58.

42 Philip L. Kelly, “Escalation of Regional Conflict: Testing the Shatterbelt Concept,” *Political Geography Quarterly* 5:2 (1986): 161–180.

43 *Ibid.*

44 Choon-ho Park, “The South China Sea Disputes: Who Owns the Islands and the Natural Resources?” *Ocean Development & International Law* 5:1 (1978): 27–59.

geologically important for both India and Pakistan because of its location and the fact it is the main source of water and power generation (electricity).⁴⁵ Another area rich in natural resources and the stage to many territorial disputes is the Persian Gulf.⁴⁶

Defense

First, the existence of numerous defense bases regionally would be extremely onerous and not efficient. Second, with advances in technology and nuclear weapons, warfare only requires a few select bases.⁴⁷ The Falkland/Malvinas Islands are located between Latin America and Africa and, therefore, it might be possible to control maritime transport and sea-lanes in the South Atlantic from them.⁴⁸ Moreover, the islands' location is central to positioning in relation to the resources of Antarctica.⁴⁹

Domestic context

Territorial disputes have to do with at least two international agents, the claiming party or challenger, and the disputed territory that is the target. Although international and regional elements are relevant, the domestic context shows another angle. Domestic leaders have direct influence in the initiation, escalation and resolution of territorial disputes. However, they are not always interested in the most advisable solutions. Indeed, internal political prestige may be a strong reason to start a territorial dispute and keep it unresolved. Political leaders may justify a territorial dispute because of natural resources and economic potential of the territory in question or prior loss of the territory, or to maintain an ongoing territorial claim,⁵⁰ so, the domestic political needs of state leaders can heavily influence their foreign policy agenda.⁵¹ Some of the most notable issues related to the local context follow.

45 Seema Sridhar, "Kashmir and Water: Conflict and Cooperation," *Swords and Ploughshares* XVI:1 (winter 2007–8): 26–29; Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana-Champaign; A. T. Wolf, "Water Wars and Water Reality: Conflict and Cooperation Along International Waterways," in S. C. Loneragan, ed., *Environmental Change, Adaptation, and Security* (Dordrecht: Springer, NATO ASI Series 2. Environment, 1999), vol 65.

46 H. Askari, "Conflicts-Territorial and Resource (Oil, Natural Gas, and Water) Disputes," in H. Askari, *Conflicts in the Persian Gulf* (New York: Palgrave Macmillan, 2013).

47 Philip L. Kelly, "Escalation of Regional Conflict: Testing the Shatterbelt Concept," *Political Geography Quarterly* 5:2 (1986): 161–180, 174.

48 Detlef Nolte and Leslie E. Wehner, "Geopolitics in Latin America, Old and New," in David R. Mares and Arie M. Kacowicz, eds., *Routledge Handbook of Latin American Security* (Abingdon: Routledge, 2015).

49 Klaus Dodds and Alan D. Hemmings, "Britain and the British Antarctic Territory in the Wider Geopolitics of the Antarctic and the Southern Ocean," *International Affairs*, 89:6 (2013): 1429–1444.

50 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 101.

51 *Ibid.*, 102.

Prior unresolved dispute

The existence of a previously unresolved dispute between different agents increases the likelihood of a territorial dispute.⁵² Similarly, the past history increases the chances of escalation.⁵³ In fact, the past history of the dispute may generate strong internal support for confrontation and, consequently, state leaders may escalate instead of pursuing a more amicable approach.⁵⁴

The history behind the dispute may justify larger budgets for the military, may bring people together behind to a common cause and in general, may provide the leader with a more prominent role.⁵⁵ As a result, although peaceful resolution may be achievable, political leaders are not always willing to move towards a compromise unless the economically valuable territory could be shared and democratic regimes were the involved parties.⁵⁶ Authoritarian single-party regimes, however, can also be willing to compromise.⁵⁷

Prior loss of territory

If there had been a loss of territory it is highly likely the defeated agent will at some point become a challenger and initiate a territorial dispute.⁵⁸ Political leaders may use justifications such as the restoration of national honor. In South America, the Falkland/Malvinas Islands conflict includes a clear case with Argentina continuously denouncing the United Kingdom for the “usurpation” of the archipelago.⁵⁹

A particular case may see a weaker challenger initiating a territorial dispute because its stronger counterpart has made concessions in past disputes.⁶⁰

Decolonization norm

When a claim is supported by decolonization norms and often by self-determination, it is more likely that a territorial dispute will take place.⁶¹ The UN Charter

52 *Ibid.*, 93.

53 *Ibid.*, 133.

54 *Ibid.*, 135–136.

55 *Ibid.*, 171–178.

56 *Ibid.*, 179. See also Berger Heldt, “Domestic Politics, Absolute Deprivation, and the Use of Armed Force in Interstate Territorial Disputes, 1950–1990,” *Journal of Conflict Resolution* 43:4 (1999): 451–478.

57 Krista E. Wiegand, “Peaceful Dispute Resolution by Authoritarian Regimes,” *Foreign Policy Analysis* 15:3 (2019): 303–321.

58 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 98.

59 Argentina’s official position (Ministry of Foreign Affairs and Worship, Argentine Republic): “The Question of the Malvinas Islands,” available at <https://www.mrecic.gov.ar/en/question-malvinas-islands-0> accessed 28/May/2019.

60 Chong Chen, “Territorial Dispute Initiation by Weaker States,” *The Chinese Journal of International Politics* 11:3 (2018): 339–372.

61 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 99.

refers to two kinds of colonial territories. UN Charter Chapter XII refers to the system of Mandates (formerly included in the Covenant of the League of Nations). UN Charter Chapter XI refers to non-self-governing territories—according to art. 73 UN Charter, those whose people have not yet attained a full measure of self-government. In addition to the UN Charter, the decolonization law through UN General Assembly resolution 1514 (XV) declares contrary to human rights the alien subjugation, domination and exploitation of people and acknowledges the right to self-determination. These positions were originally intended for former European colonies around the world,⁶² but conflicts in Yugoslavia and Kosovo arguably extend the use of decolonization law.⁶³

Claims, issues at stake and contexts

There is no need to re-conceptualize territorial disputes to assess and potentially solve them. Their complexity, however, must be acknowledged in order to examine them accurately. Each territorial dispute has its own particular elements, its own historical, political, sociological and geographical characteristics. However, all have some common features. Regardless of their peculiarities, all territorial disputes include at least a challenger with a justification for its claim and an opposing agent with a different view. The challenger may claim that whoever was the first one in the disputed territory is its sovereign, and that they were there first. But the opposite agent may dispute this, supporting their case with historical, legal, political, cultural and geographical evidence, and arguing either a) that they were there first, or b) that just being first does not justify acquisition but being first to exploit its resources or establish a community in the disputed territory.

To comprehend the complexity in any territorial dispute, the relevant issues at stake, such as economy, location, minorities or political unification, must be evaluated through the lens of the domestic, regional and international contexts. Depending on the issue at stake and the context, the kind of claim will follow. For instance, if a political leader of a non-central state wants to gain access to a territory rich in natural resources that is under the sovereignty of another state and lacks sufficient military power, the political leader may give more pre-eminence to the domestic context—including the leader's popularity—than to the regional and international ones such as bilateral or multilateral agreements, blockades, and previous settlement.

This type of assessment may bring light to the legal and political limbo in ongoing territorial disputes. Currently analysis may focus on elements that, despite their relevance, are not central to attaining a permanent and peaceful agreement, or that can offer only a partial view of the territorial dispute in question. In the

62 Marion Mushkhatt, "The Process of Decolonization International Legal Aspects," *University of Baltimore Law Review* 2:1 (1972): 16–34.

63 For an extensive analysis about decolonization law see Thomas D. Grant, "Extending Decolonization: How the United Nations Might Have Addressed Kosovo," *Georgia Journal of International and Comparative Law* 28:9 (1999): 9–54.

previous example, regardless of whether the challenger gets access to the disputed territory and its natural resources based, for example, on historical and geographical claims, the political leader gets a higher payoff in terms of improved approval from the elite and the people of their country.⁶⁴ Therefore, to attempt to resolve the dispute by dealing with the regional context and the natural resources issues would fail to recognize the pertinence of domestic politics.

Traditional scholarly approaches explain state behavior by reference to one or a few of the existing claims, issues at stake or contexts.⁶⁵ The challenge is to include all the elements that constitute a territorial dispute, whether related to population, territory and government, and distinguish geographically-based disputes from, for example, ethnically-based differences.⁶⁶ Without a more comprehensive framework, studies are limited in their theoretical and empirical ability to explain disputes and conflicts and their potential to suggest feasible, permanent and peaceful solutions. However, theoretical and empirical studies about territorial disputes are nowadays sophisticated enough⁶⁷ to permit a synergy among them.

To center the analysis only on the challenger's claim in a territorial dispute is to miss several other aspects. First, the challenger may have other pressing factors to take into account. Second, there is always at least one counter-claimant with a basis for claiming the same territory. Moreover, different scholars interpreting the same territorial dispute may give pre-eminence to completely different claims. For instance, a realist view of a territorial dispute would emphasize one-sided reasons and therefore, claims related to territorial integrity, economic benefits or even ideological nationalism. Conversely, a normative approach may prioritize only the legal basis for the claim, the just acquisition principle⁶⁸ or any other conception of justice. Depending on the approach, if power or authority were the center of the argument in a territorial dispute, the value of a territory would be defined by its geographical location or richness in natural resources. But if justice were the core differentiator and the territorial dispute had to do with correcting past wrongdoings, legal titles would be more relevant. There are many examples that demonstrate how a limited view of claims results in a partial understanding of the origin, continuation, escalation and potential resolution of territorial disputes.⁶⁹

64 Giacomo Chiozza and Ajin Choi, "Guess Who Did What: Political Leaders and the Management of Territorial Disputes, 1950–1990," *The Journal of Conflict Resolution* 47:3 (2003): 251–278.

65 Paul F. Diehl, "What Are They Fighting For? The Importance of Issues in International Conflict Research," *Journal of Peace Research* 29:3 (1992): 333–344.

66 Harvey Starr, "Territory, Proximity, and Spatiality: The Geography of International Conflict," *International Studies Review* 7 (2005): 387–406.

67 Monica Duffy Toft, "Territory and War," *Journal of Peace Research* 51 (2014): 185–198.

68 For the author's view about the just acquisition principle and territorial disputes see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 6.

69 Tuomas Forsberg, "Explaining Territorial Disputes: From Power Politics to Normative Reasons," *Journal of Peace Research* 33:4 (1996): 433–449. Forsberg reviews and

To assess a territorial dispute depending on the most relevant issue at stake raises at least two questions. The first involves the role played by other issues at stake that may not be necessary for the initiation of a territorial dispute but may be sufficient to prolong it or even escalate it into conflict. For example, although the claim may aim to achieve political unification, recover national territory or obtain valuable resources, the decision to start or continue a territorial dispute may be based on popular support and governmental legitimacy.⁷⁰ Second, similarly to the previous point about claims, the relevance of an issue at stake may be determined by the scholar and not the difference itself.⁷¹

To discard the domestic, regional or international contexts is to limit understanding of a territorial dispute. A scholar in legal and political sciences may evaluate a particular region only to miss the local and international dimensions and their relevant issues. For example, in terms of the South China Sea, China understands the situation as part of its domestic agenda and denies discussion in the regional context.⁷² While Koreans focus on Northeast Asia, for example, Japan is more centered on Greater East Asia and China is interested in the whole area of Asia.⁷³

The previous sections resulted in some guidelines for the assessment of territorial disputes: there is an ample variety of claims; claims are not mutually exclusive or collectively exhaustive; similarly, there are several issues at stake that are not mutually exclusive or collectively exhaustive; to gain a more comprehensive understanding of a territorial dispute, domestic, regional and international contexts need to be considered.⁷⁴

Claims are not mutually exclusive or collectively exhaustive

The strategic location of Kashmir as a link between India and Pakistan, intertwined with the economic value of the natural resources present in the region, is the tip of the iceberg. Religious, linguistic, cultural and historical ties

compares eight cases: Kuril Islands, Pytalovo/Abrene, Petserimaa and Ivangorod, Karelia, Moldova, Kaliningrad, Transcarpathia and the former East Poland.

70 Paul K. Huth, "Enduring Rivalries and Territorial Disputes, 1950–1990," *Conflict Management and Peace Science* 15:1 (1996): 7–41.

71 See for example the application of game theory to territorial disputes in David B. Carter, "The Strategy of Territorial Conflict," *American Journal of Political Science* 54:4 (2010): 969–987.

72 M. Beeson, "Can ASEAN Cope with China?" *Journal of Current Southeast Asian Affairs*, 35:1 (2016): 5–28; Bama Andika Putra, "China's Assertiveness in the South China Sea: Have ASEAN's Endeavors in Establishing Regional Order Truly Failed?" *Journal of Politics and Law* 8:4 (2015): 178–184; R. Emmers, "The Changing Power Distribution in the South China Sea: Implications for Conflict management and Avoidance," *Political Science* 62:2 (2019): 118–131.

73 Jong Kun Choi and Chung-in Moon, "Understanding Northeast Asian Regional Dynamics: Inventory Checking and New Discourses on Power, Interest, and Identity," *International Relations of the Asia-Pacific* 10 (2010): 343–372.

74 The examples offered below are explored in detail in chapters 6, 7 and 8.

between populations and a potential political unification add sociological and political components. In addition to governmental claims, the population in the area has its own wishes. In 2009 a poll was commissioned and administered in this territory.⁷⁵ The study was published in 2010 by Chatham House (the Royal Institute of International Affairs) as “Kashmir: Paths to Peace.” This was the first poll conducted on both sides of the Line of Control that has separated Indian- and Pakistani-controlled Kashmir since the UN ceasefire on 1 January 1949. The sample was of 3,774 people and involved face-to-face interviews. The respondents were adults aged over 16. Of the total respondents 2,374 were from 11 of the 14 districts which make up Indian-controlled Jammu and Kashmir. The rest of the respondents, 1,400 people, were from seven of the eight districts in Pakistani-controlled Azad Jammu and Kashmir. For the majority, the sovereignty issue was an important problem. However, when compared to other realities the poll showed clearly that the people of Kashmir on both sides of the Line of Control have other concerns they believe to be more important. A vast majority thought unemployment was the most significant problem (66% in AJK and 87% in J&K). Kashmiris were also concerned about Government corruption (22% AJK and 68% J&K), economic development (42% AJK, 45% J&K), human rights abuses (19% AJK, 43% J&K) and the Kashmir conflict itself (24% AJK, 36% J&K).

Often overlooked, the Israel-Palestine difference includes several “peoples” with many claims.⁷⁶ In broad terms, it is possible to distinguish people living in Israel (a *de jure* and *de facto* sovereign state), people living in Palestine (a *de facto* state), diaspora, refugees and settlers in contested lands. To comprehend and evaluate the situation, the scholar should define and characterize “people” in the context of this territorial dispute, decide who counts, and determine their respective claims.

Issues at stake are not mutually exclusive or collectively exhaustive

The Northern Limit Line between North Korea and South Korea is a clear example of the result of a combination of many issues. In principle, exploitation of natural resources, commerce and access to the West Sea may indicate the relevance of the strategic location and economic value of the territory. Nevertheless, for a comprehensive view any study should include the potential for political unification.⁷⁷

75 Robert W. Bradnock, *Kashmir: Paths to Peace* (London: Chatham House, 2010); available at https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Asia/0510pp_kashmir.pdf accessed 30/May/2019.

76 Oded Haklai, “The Decisive Path to State Indecisiveness: Israeli Settlers in the West Bank in Comparative Perspective,” in Oded Haklai and Neophytos Loizides, *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts* (Stanford, California: Stanford University Press, 2015), 17–39.

77 For a detailed study about the Northern Limit Line see Terence Roehrig, “Korean Dispute Over the Northern Limit Line: Security, Economics, or International Law?” *Maryland Series in Contemporary Asian Studies* 3 (2008): 1–59.

Under the Esguerra-Bárceñas Treaty in 1928, Nicaragua confirmed its sovereignty over several islands, including the archipelago of San Andres and Providencia. In 1980, the Sandinista government of Nicaragua declared the treaty null and void. Nicaragua's claims are based on sharing the continental shelf and that therefore, the islands would be within its natural borders. Colombia based its position on historical and legal titles.⁷⁸ Meanwhile, the interests of the Raizal people of San Andres and Providencia raise the issue of minorities. Despite attempts by Colombia to "Colombianize" the locals, the conflict resulted in a backlash by raising ethnic consciousness.⁷⁹ Not to take the population that lives in the disputed islands into account, and that might have a position relative to the issues at stake, is to ignore that they *prima facie* have moral standing because the final decision may make a non-trivial difference to how they may be treated.⁸⁰

To gain a more comprehensive understanding of a territorial dispute all three contexts should be considered: domestic, regional and international

Crimea, the South China Sea, the Falkland/Malvinas Islands, Gibraltar, Northern Ireland, the several differences related to islands in Africa (the Glorioso islands, Chagos islands, Banc du Geyser and many others) and the Arab-Israeli conflict are a few examples of how the dynamics between the domestic, regional and international contexts are entangled.

Crimea may be characterized as a local and regional territorial dispute between the Russian Federation and Ukraine. However, expansion of NATO and the EU appear to (partly) explain Russian behavior.⁸¹

Both Morocco and Spain claim sovereignty over five territories in North Africa: Ceuta, Melilla, Peñón de Vélez de la Gomera, Peñón de Alhucemas and the Chafarinas islands. Although in principle this is a domestic and regional context, the territories are also within the European Union and NATO areas because of Spain's membership in those organizations. Domestic, regional and international geopolitics and biopolitics therefore meet in this space.⁸²

Cyprus has economic importance because of its fertility and its location on Eastern Mediterranean trading routes, as well as strategic importance as a military

78 Alan J. Day, ed., *Border and Territorial Disputes* (Essex: Longman, 1982), 358–361.

79 Dario Ranocchiari and Gloria Calabresi, "Ethnicity and Religion in the Archipelago of San Andrés, Providencia and Santa Catalina," *Bulletin of Latin American Research* 35:4 (2016): 481–495.

80 For the author's view on "who counts" in negotiations about sovereignty conflicts and moral standing see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor & Francis Group, 2017), chapter 6.

81 Maximilian Klotz, "Russia and the Ukrainian Crisis: A Multiperspective Analysis of Russian Behaviour, by Taking into Account NATO's and the EU's Enlargement," *Croatian International Relations Review* 23:80 (2017): 259–287.

82 Corey Johnson and Reece Jones, "The Biopolitics and Geopolitics of Border Enforcement in Melilla," *Territory, Politics, Governance* 6:1 (2018): 61–80.

base in the Middle East.⁸³ Turkey has tried to link the Cypriot question to the Aegean dispute.⁸⁴ Regionally and internationally, the dispute over Cyprus includes the European Union and NATO members and raises the question of EU-NATO cooperation in light of members' domestic agendas.⁸⁵ Domestically, Cyprus presents a case of legal principles against pragmatic engagements with the issue of the right of return for displaced persons to their properties.⁸⁶

Conclusion

Territorial disputes start, remain in a legal and political limbo, escalate or find a peaceful and permanent solution for several reasons. First, this chapter presented why these differences have a pervasive nature: that they may have to do with issues related to territory as well as population and government domestically, regionally and internationally. Indeed, similar to sovereignty, territorial disputes are multi-faceted and multi-level. Therefore, to leave aside elements in their evaluation is to risk a partial understanding of a complex situation.

The following section distinguished different kinds of claims the challenger or the challenged in any territorial dispute may have. These claims range from those with a legal basis related to territorial title to non-legal reasons centered on the ideology of the government in question. The concept of colorable claim encapsulates the very broad nature of these claims.

Third, the chapter introduced the main issues at stake that most (if not all) territorial disputes may present: strategic and economic value of the territory, minorities and political unification. A range of examples show that in most cases territorial disputes initiate and escalate into conflict because of a combination of these issues and that, although they may start because of a particular issue such as strategic value of the territory, they may remain unresolved because of very different reasons, such as insistence on political unification.

The next section argued that a comprehensive and more advantageous understanding of territorial disputes should include the domestic and regional as well as international contexts. The domestic context shapes to an extent the regional and international dimension, and vice-versa. In that respect, state leaders take into consideration the regional and international context as well as the domestic situation when they initiate, maintain in a legal and political limbo, escalate into conflict or settle a territorial dispute. Therefore, an exhaustive analysis of any territorial dispute should take into consideration all three contexts.

83 Alan J. Day, ed., *Border and Territorial Disputes* (Essex: Longman, 1982), 16–26.

84 David Downing, *An Atlas of Territorial and Border Disputes* (London: New English Library, 1980), 114.

85 Nina Græger, "European Security as Practice: EU–NATO Communities of Practice in the Making?" *European Security* 25:4 (2016): 478–501.

86 Neophytos Loizides, "Settlers, Mobilization, and Displacement in Cyprus: Antinomies of Ethnic Conflict and Immigration Politics," in Oded Haklai and Neophytos Loizides, *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts* (Stanford, California: Stanford University Press, 2015): 168–191.

The final section brought together a series of partial conclusions or guidelines for the assessment of territorial disputes and included some relevant examples to illustrate each of these points.

Bibliography

- Allen, Stephen. *The Chagos Islanders and International Law*, Oxford and Portland, Oregon: Hart Publishing, 2014.
- Askari H. "Conflicts-Territorial and Resource (Oil, Natural Gas, and Water) Disputes." In *Conflicts in the Persian Gulf*. New York: Palgrave Macmillan, 2013.
- Battaglini, Jorge Mario. "The Coexistence of Peace and Conflict in South America: Toward a New Conceptualization of Types of Peace." *Revista Brasileira de Política Internacional* 55:2 (2012): 131–151.
- Beeson, M. "Can ASEAN Cope with China?" *Journal of Current Southeast Asian Affairs* 35:1 (2016): 5–28.
- Burghardt, Andrew F. "The Bases of Territorial Claims." *Geographical Review* 63:2 (1973): 225–245.
- Carter, David B. "The Strategy of Territorial Conflict." *American Journal of Political Science* 54:4 (2010): 969–987.
- Chen, Chong. "Territorial Dispute Initiation by Weaker States." *The Chinese Journal of International Politics* 11:3 (2018): 339–372.
- Chiozza, Giacomo and Choi, Ajin. "Guess Who Did What: Political Leaders and the Management of Territorial Disputes, 1950–1990." *The Journal of Conflict Resolution* 47:3 (2003): 251–278.
- Choi, Jong Kun and Moon, Chung-in. "Understanding Northeast Asian Regional Dynamics: Inventory Checking and New Discourses on Power, Interest, and Identity." *International Relations of the Asia-Pacific* 10 (2010): 343–372.
- Damis, John. *Conflict in Northwest Africa: The Western Sahara Dispute*. Stanford, California: Hoover Institution Press, 1983.
- Day, Alan J., ed. *Border and Territorial Disputes*. Essex: Longman, 1982.
- Detlef, Nolte and Wehner, Leslie E. "Geopolitics in Latin America, Old and New." In *Routledge Handbook of Latin American Security*, David R. Mares and Arie M. Kacowicz, eds. Abingdon: Routledge, 2015.
- Diehl, Paul F. "What Are They Fighting For? The Importance of Issues in International Conflict Research." *Journal of Peace Research* 29:3 (1992): 333–344.
- Dodds, Klaus and Hemmings, Alan D. "Britain and the British Antarctic Territory in the Wider Geopolitics of the Antarctic and the Southern Ocean." *International Affairs* 89:6 (2013): 1429–1444.
- Downing, David. *An Atlas of Territorial and Border Disputes*. London: New English Library, 1980.
- Dzurek, Daniel J. "What Makes Some Boundary Disputes Important?" *IBRU Boundary and Security Bulletin* 7:4 (1999–2000):83–95.
- Dzurek, Daniel J. "What Makes Territory Important: Tangible and Intangible Dimensions." *GeoJournal* 64 (2005): 263–274.
- Emmers, R. "The Changing Power Distribution in the South China Sea: Implications for Conflict Management and Avoidance." *Political Science* 62:2 (2019): 118–131.
- Forsberg, Tuomas. "Explaining Territorial Disputes: From Power Politics to Normative Reasons." *Journal of Peace Research* 33:4 (1996): 433–449.

- Fravel, M. Taylor. "Power Shifts and Escalation: Explaining China's Use of Force in Territorial Disputes." *International Security* 32:3 (2007–2008): 44–83.
- Græger, Nina. "European Security as Practice: EU–NATO Communities of Practice in the Making?" *European Security* 25:4 (2016): 478–501.
- Grant, Thomas D. "Extending Decolonization: How the United Nations Might Have Addressed Kosovo." *Georgia Journal of International and Comparative Law* 28:9 (1999): 9–54.
- Haklai, Oded. "The Decisive Path to State Indecisiveness: Israeli Settlers in the West Bank in Comparative Perspective." In *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts*, Oded Haklai and Neophytos Loizides, eds. Stanford, California: Stanford University Press, 2015.
- Heath, Timothy R. "Dispute Control: China Recalibrates Use of Military Force to Support Security Policy's Expanding Focus." *The Journal of Social, Political, and Economic Studies* 43:1–2 (2018): 33–77.
- Heldt, Berger. "Domestic Politics, Absolute Deprivation, and the Use of Armed Force in Interstate Territorial Disputes, 1950–1990." *Journal of Conflict Resolution* 43:4 (1999): 451–478.
- Hill, Norman. *Claims to Territory in International Law and Relations*. London, New York and Toronto: Oxford University Press, 1945.
- Hodges, Tony. *Western Sahara: The Roots of a Desert War*. Westport, CT: Lawrence Hill and Company, 1983.
- Holsti, Helevi J. *The State, War and the State of War*. Cambridge: Cambridge University Press, 1996.
- Huth, Paul K. "Enduring Rivalries and Territorial Disputes, 1950–1990." *Conflict Management and Peace Science* 15:1 (1996): 7–41.
- Huth, Paul K. *Standing Your Ground. Territorial Disputes and International Conflict*. Ann Arbor: University of Michigan Press, 2001.
- Jeffery, Laura. *Chagos Islanders in Mauritius and the UK: Forced Displacement and Onward Migration*. Manchester and New York: Manchester University Press, 2011.
- Johnson, Corey and Jones, Reece. "The Biopolitics and Geopolitics of Border Enforcement in Melilla." *Territory, Politics, Governance* 6:1 (2018): 61–80.
- Kacowicz, Arie M. *Zones of Peace in the Third World: South America and West Africa in Comparative Perspective*. Albany: State of New York Press, 1998.
- Kelly, Philip L. "Escalation of Regional Conflict: Testing the Shatterbelt Concept." *Political Geography Quarterly* 5:2 (1986): 161–180.
- Klotz, Maximilian. "Russia and the Ukrainian Crisis: A Multiperspective Analysis of Russian Behaviour, by Taking into Account NATO's and the EU's Enlargement." *Croatian International Relations Review* 23:80 (2017): 259–287.
- Lake, David A. "Regional Security Complexes: A Systems Approach." In *Regional Orders: Building Security in the New World*. University Park, PA: The Pennsylvania State University, 1997.
- Loizides, Neophytos. "Settlers, Mobilization, and Displacement in Cyprus: Antinomies of Ethnic Conflict and Immigration Politics." In *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts*, Oded Haklai and Neophytos Loizides, eds. Stanford, California: Stanford University Press, 2015.
- Luke, David A. "Regional Hierarchy: Authority and Local International Order." *Review of International Studies* 35:1 (2009): 35–58.
- Miller, Benjamin. "When and How Regions Become Peaceful: Potential Theoretical Pathways to Peace." *International Studies Review* 7:2 (2005): 229–267.

- Miller, Robert J. "The Doctrine of Discovery: The International Law of Colonialism." *The Indigenous People's Journal of Law, Culture and Resistance* 5:1 (2019): 35–42.
- Murphy, Alexander B. "Regions as Social Construct: The Gap between Theory and Practice." *Progress in Human Geography* 15:1 (1991): 22–35.
- Mushkhatt, Marion. "The Process of Decolonization International Legal Aspects." *University of Baltimore Law Review* 2:1 (1972): 16–34.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor & Francis Group, 2017.
- Park, Choon-ho. "The South China Sea Disputes: Who Owns the Islands and the Natural Resources?" *Ocean Development & International Law* 5:1 (1978): 27–59.
- Pounds, Norman John Greville. *Political Geography*. New York: McGraw-Hill, 1972.
- Putra, Bama Andika. "China's Assertiveness in the South China Sea: Have ASEAN's Endeavors in Establishing Regional Order Truly Failed?" *Journal of Politics and Law* 8:4 (2015): 178–184.
- Ranocchiaro, Dario and Calabresi, Gloria. "Ethnicity and Religion in the Archipelago of San Andrés, Providencia and Santa Catalina." *Bulletin of Latin American Research* 35:4 (2016): 481–495.
- Rawls, John. *A Theory of Justice*, Revised Edition. Oxford: Oxford University Press, 1999.
- Richards, Katherine. "China –India: An Analysis of the Himalayan Territorial Dispute." In *Australian Defence College, Centre for Defence and Strategic Studies* (2015).
- Roehrig, Terence. "Korean Dispute Over the Northern Limit Line: Security, Economics, or International Law?" *Maryland Series in Contemporary Asian Studies* 3 (2008): 1–59.
- Rose, Laurel L. "African Elites' Land Control Maneuvers." *Études rurales* 163–164 (2002): 187–213.
- Sakuwa, Kentaro. "The Regional Consequences of Territorial disputes: An Empirical Analysis of the South China Sea Disputes." *Journal of Asian Security and International Affairs* 4:3 (2017): 316–336.
- Shaw, Malcom N. "The Heritage of States: The Principle of Utis Possidetis Juris Today." *British Year Book of International Law* 67 (1997): 75–154.
- Spinks, Charles Nelson. "Origin of Japanese Interests in Manchuria." *The Far Eastern Quarterly* 2:3 (1943): 259–271.
- Sridhar, Seema. "Kashmir and Water: Conflict and Cooperation." *Swords and Ploughshares* XVI:1 (Winter 2007–2008): 26–29. Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana-Champaign.
- Stafford, F. E. "The Ex-Italian Colonies." *International Affairs* 25 (1949): 47–55.
- Starr, Harvey. "Territory, Proximity, and Spatiality: The Geography of International Conflict." *International Studies Review* 7 (2005): 387–406.
- Strausz-Hupé, Robert and Possony, S. T. *International Relations in the Age of the Conflict Between Democracy and Dictatorship*. New York: McGraw-Hill, 1954.
- Sumner, Brian Taylor. "Territorial Disputes at the International Court of Justice." *Duke Law Journal* 53 (2004): 1779–1812.
- Toft, Monica Duffy. "Territory and War." *Journal of Peace Research* 51 (2014): 185–198.
- Wiegand, Krista E. "Peaceful Dispute Resolution by Authoritarian Regimes." *Foreign Policy Analysis* 15:3 (2019): 303–321.
- Wolf, A.T. "Water Wars and Water Reality: Conflict and Cooperation Along International Waterways." In *Environmental Change, Adaptation, and Security*, edited by S.C. Lonegan. NATO ASI Series (2. Environment), vol 65. Dordrecht: Springer, 1999.

5 Dispute settlement

Introduction

There are many ways to solve territorial disputes. International law, politics and diplomatic relations offer an array of remedies that go from negotiation and mediation to intervention of international organizations and bodies such as the United Nations and the International Court of Justice. The resolution of a territorial dispute may be independence, the acknowledgment of self-determination, free association or any of several other outcomes.

Despite the existence of legal norms that establish procedures to deal with territorial disputes, the political means to tackle them, and a variety of potential solutions, many territorial disputes remain unresolved. In addition, regardless of a limited understanding of sovereignty, which is, by definition, shareable, it is not uncommon that the challenger and the challenged agents in a territorial dispute take absolute and uncompromising stances and, therefore, prefer the legal and political limbo offered by the *status quo* than entering into discussions with the goal of attaining a peaceful and permanent settlement.

This chapter discusses the main remedies applied at the international level in territorial disputes and why these alternatives are not the solution to some well-known and long-standing differences. Some of these remedies have been and are effective in situations where the challenger and challenged agents leave aside reasons that otherwise would only guarantee an endless dispute and, potentially, escalation into conflict. However, these same remedies fail to observe the intricate essence of some territorial disputes.

This monograph acknowledges the circumstances that seem to make some territorial disputes unresolvable. In tune with the previous chapter, the starting point is the recognition that territorial disputes present several issues in domestic, regional and international contexts. By focusing on one or a few issues and one context only at the expense of the other two, most of these remedies fail to note the complexity behind some territorial disputes. The chapter finishes by introducing egalitarian shared sovereignty as a means to deal with the multi-level and multi-faceted quality of these disputes.

Public international law and international dispute settlement

Public international law has several legal norms related to international dispute settlement. These legal norms include differences between states and other international agents such as international organizations and non-state international persons. Since this monograph refers to territorial disputes of a certain kind, those involving states, the following paragraphs serve only to focus attention on the relevant means to settle disputes between states. In this regard, the United Nations Organization includes among its applicable norms:

Article 2 (3) UN Charter states: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

UN General Assembly Resolution 37/10 (Manila Declaration on the Peaceful Settlement of International Disputes, 1982) Article 2: Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

The United Nations establishes a non-prescriptive menu of remedies to deal with disputes where states are free to choose the procedure they may follow to settle a difference:

Article 33 (1) UN Charter states: The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

UN General Assembly Resolution 2625 (Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, 1970) Article 1: [...] States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

UN General Assembly Resolution 37/10 (Manila Declaration on the Peaceful Settlement of International Disputes, 1982) Article 5: States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices.

Regardless of the non-prescriptive menu of remedies, there is a legal obligation for states to find a peaceful way to deal with disputes. There is a vast bibliography

related to dispute settlement and the different means available for use.¹ Despite the variety of procedures and remedies, several territorial disputes remain unresolved and there seems to be little hope for their peaceful and permanent arrangement. That is because, for these disputes settlement presents a degree of uncertainty that makes the challenger and the challenged parties doubt the value of their application. This does not mean that these and other remedies are of no use. If the claiming agents accept them and they result in a peaceful understanding, there is no question about their reasonableness. However, all existing solutions may be reasonably rejected by one or more parties in some ongoing territorial disputes, such as solutions that imply ignoring claims, unfair policies, use of force or any action that may go against an otherwise peaceful situation. Therefore, there is a case to argue about the need for a peaceful solution that current international remedies cannot offer, a solution that no party may reasonably reject.² This section briefly introduces each of the main means to settle international disputes—negotiation, mediation, inquiry, conciliation, arbitration, judicial settlement, and regional agencies—and discusses their viability.³

Negotiation

Negotiation is a dispute settlement method by which states themselves may put an end to their differences.⁴ The aim of negotiation is to offer a platform for peaceful dispute resolution. The resulting agreement offers legitimacy because the parties involved participate willingly to produce a consensual resolution. Different from other dispute settlement means included in art. 33 of the UN Charter,

1 For the most comprehensive and up-to-date list of resources about dispute settlement (including handbooks, leading articles, bibliographies, periodicals, serial publications and documents of interest) see the Peace Palace Library available at <https://www.peacepalacelibrary.nl/research-guides/settlement-of-international-disputes/settlement-of-international-disputes/> accessed 03/June/2019.

2 For the difference between principles “which no one could reasonably reject” and principles “which everyone could reasonably accept” see T.M. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press; Paris: Editions de la Maison des Sciences de l’Homme, 1982).

3 Due to this monograph’s object of study, territorial disputes, international trade disputes covered by the International Monetary Fund, the World Bank and the General Agreement on Tariffs and Trade (GATT) are not covered here. For details about these arrangements see J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 9.

4 For a comprehensive analysis about negotiation see Barry O’Neill, “International Negotiation: Some Conceptual Developments,” in *Annual Review of Political Science* 21:1 (2018): 515–533; Brigid Starkey, Mark A. Boyer and Jonathan Wilkenfeld, *International Negotiation in a Complex World* (Plymouth: New Millennium Books in International Studies, Rowman and Littlefield, 2005); and Brigid Starkey, Mark A. Boyer and Jonathan Wilkenfeld, *Negotiating a Complex World: An Introduction to International Negotiation* (Plymouth: New Millennium Books in International Studies, Rowman and Littlefield, 2005).

negotiations only involve the states that are parties to a dispute. The negotiation may be conducted by “normal diplomatic channels” such as foreign offices or diplomatic representatives, competent authorities such as representatives of the competent ministry of each party, or by a mixed or joint commission.⁵ Arguably, the process of pre-negotiation⁶ is as important as the negotiation itself because that is when the parties define the agenda, points to be discussed, representation, etc. Obviously, if the pre-negotiation is not successful there will be no room for negotiation. Cooperation between the participants is key in order to achieve an agreement. For a successful settlement, the parties in any negotiation should be able to obtain an outcome in which the benefits outweigh the losses on both sides. Concessions may be in place and compromise may be required in which each party may have to sacrifice some benefits.⁷ The main issue in relation to negotiations has to do with what makes them legitimate: consent. Unless the challenger and challenged parties in a dispute willingly participate, there cannot be a negotiation. The lack of consent can vary from a simple refusal to deal with a counterpart, as with Argentina and the United Kingdom after the 1982 Falklands/Malvinas war, or a complete denial of standing to any other party, as in the ongoing Arab-Israeli difference where most of the Arab states refuse to recognize Israel and, similarly, Israel does not recognize the Palestine Liberation Organization.

Another possible problem is related to the participants themselves and not the negotiation *per se*. Each claiming party may present internal diversity in terms of their culture, ethnicity, religion, political views, etc. Therefore, the representatives in the negotiation may not actually be acting on behalf of those who are meant to be represented. Iraq, where Kurds in the north and Shiites in the south have to do with the same state but present very different views; Hamas in the Palestinian territories; and the Irish Republican Army in Northern Ireland are examples of very complex domestic situations where it is at least difficult to determine an unequivocal will to negotiate.

Even when the consent of all involved parties is obtained, negotiations may not offer the best environment for settling the dispute.⁸ Unequal power between the participants may raise several negative issues. From pre-negotiation elements such as setting the agenda of issues to be discussed to the actual negotiations and resulting settlement, the procedure and outcome may only reflect this inequality. Although a less powerful participant may not be at mercy of its more powerful counterpart,⁹ the unbalanced bargaining situation between the participants may

5 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 8–9.

6 Janice Gross Stein, *Getting to the Table: The Process of International Prenegotiation* (Baltimore: Johns Hopkins University Press, 1989).

7 J. Burton, “Resolution of Conflict,” *International Studies Quarterly* 16:1 (1972): 5–30.

8 Cecilia Albin, *Justice and Fairness in International Negotiation* (Cambridge: Cambridge University Press, 2001).

9 J. W. Salacuse, “Lessons for Practice,” in I. W. Zartman and J. Z. Rubin, eds., *Power and Negotiation* (Michigan: Ann Arbor, 2000), 257.

directly affect the possibility of reaching an agreement.¹⁰ For instance, although only directly involved states may take part in the negotiations, the fact any of these states is part of a coalition may have an effect on the process and the outcome.¹¹

Mediation

If the parties in an international dispute cannot achieve a peaceful resolution by their own means through negotiation, a third party may intervene.¹² Mediation is different from arbitration and adjudication, as the third party only aims to persuade the challenger and the challenged agents to agree on a peaceful settlement.¹³ In any case, the third party does not set provisions to resolve the difference itself and therefore, its suggestions are not binding.

The intervention may be in the form of simple encouragement to resume negotiations or an offer to be a channel of communication, or may include more active participation in order to advance proposals.¹⁴

The process of mediation and its outcome depend on the willingness of the participants to compromise. Furthermore, even if an agreement is achieved, its actual implementation may not be. Iraq, for instance attacked Iran in 1980 after reaching the Algiers Accord with its neighbor.

There are some circumstances that may decide the success or failure in mediation, including identification, cohesiveness, type of regime, motivation, previous and ongoing relationships, and distribution of power.¹⁵ A state may be

- 10 Anne Peters, "International Settlement: A Network of Cooperation Duties," *European Journal of International Law* 14:1 (2003): 1–34.
- 11 Christophe Dupont, "Coalition Theory: Using Power to Build Cooperation," in *International Multilateral Negotiation: Approaches to the Management of Complexity*, ed. I. William Zartman (San Francisco: Jossey-Bass, 1994), 148.
- 12 J. Bercovitch and J. Z. Rubin, *Mediation in International Relations: Multiple Approaches to Conflict Management* (London: Palgrave Macmillan, 1992); Saadia Touval and I. William Zartman, eds., *International Mediation in Theory and Practice* (London and New York: Westview Press, 1985); Jacob Bercovitch, "Mediation at the Interstate Level: Engagement or Neutrality as the Key to Success," in *Peaceful Conflict Management on the Interstate Level*, ed. N. Ropers (Bonn: International Peace Foundation, 1995), 89–112; Jacob Bercovitch, *Theory and Practice of International Mediation* (London and New York: Routledge, Taylor & Francis Group, 2011); and many others.
- 13 For a distinction between "pure mediation," in which the parties retain control over the outcome, and "mediation with muscle," in which the third party may deploy positive and negative inducements see Peter Wallensteen and Isak Svensson, "Talking Peace: International Mediation in Armed Conflicts," *Journal of Peace Research* 51:2 (2014): 315–327.
- 14 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 26. See also Sara McLaughlin Mitchell, "Mediation in Interstate Disputes," *International Negotiation* 19 (2014): 191–200.
- 15 Marieke Kleiboer, "Understanding Success and Failure of International Mediation," *Journal of Conflict Resolution* 40:2 (1996): 360–389. See also J. Bercovitch, "International Mediation and Dispute Settlement: Evaluating the Conditions for Successful Mediation," *Negotiation Journal* 7:1 (1991): 17–30.

identified externally by its peers as a single agent with “one will” despite internal divisions, or it may not be recognized at all, as in the case of Palestinians in the Middle East. Moreover, domestic realities may include a lack of clear leadership or representation with the authority to negotiate any agreement. The African continent offers several examples between 1962 and 2010 in which the existence of rebel groups had an impact on the likelihood that conflicts were mediated.¹⁶ Democratic and non-democratic regimes may have different views on the same dispute purely because of their internal situations. The Arab/Persian Gulf presents many already settled territorial disputes that are still working against Gulf Cooperation Council unity.¹⁷

States, international organizations and even individuals may act as mediators. Three attributes characterize an ideal mediator: impartiality, leverage and status.¹⁸ The claimants may find motivation in mediation because a third party may offer all of them an unbiased opinion that helps them avoid any escalation into armed conflict. However, how unbiased the opinion of the third-party is remains open to debate. For instance, China’s diplomacy in the Middle East and North Africa should be weighed against its commercial, political and diplomatic interests in those areas.¹⁹ An amicable relationship between claiming parties may foster a peaceful resolution but this has to be weighted by each agent against the existing power disparity. The stronger claimant may prefer imposing its ways rather than negotiating a solution. On the other hand, the weaker peer may see mediation as a subterfuge that legitimizes the gains of the claimant with the greater power.

Inquiry

Inquiry²⁰ may be broadly defined as a process performed by a court or another body to resolve an issue of fact.²¹ Alternatively, it may be an arrangement where states choose to have their disagreement on some issue independently

16 Carmela Lutmar and Lesley Terris, “What do they Want? Rebels’ Objectives and Civil War Mediation,” *Peace Economics, Peace Science and Public Policy* 24:4 (2018): 1–7.

17 Yoel Guzanasky, “Lines Drawn in the Sand: Territorial Disputes and GCC Unity,” *The Middle East Journal* 70:4 (2016): 543–559.

18 For a discussion of these three attributes see Marieke Kleiboer, “Understanding Success and Failure of International Mediation,” *The Journal of Conflict Resolution* 40:2 (1996): 360–389.

19 Degang Sun and Yahia Zoubir, “China’s Participation in Conflict Resolution in the Middle East and North Africa: A Case of Quasi-Mediation Diplomacy?” *Journal of Contemporary China* 27:110 (2018): 224–243.

20 J. Collier and V. Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford: Oxford University Press, 1999), 24; N. Bar-Yaacov, *The Handling of International Disputes by Means of Inquiry* (London: Oxford University Press, 1975).

21 Inquiry as a specific procedure is distinguished from the general fact-finding process used as part of other means to settle a dispute. See Richard B. Lillich, ed., *Fact-Finding Before International Tribunals: Eleventh Sokol Colloquium* (Ardsley-on-Hudson, NY: Transnational Public Inc., 1991).

investigated.²² The latter was introduced by the 1899 (amended in 1907) Hague Conventions for the Pacific Settlement of Disputes. According to arts. 9–14 of the 1899 Hague Convention the procedure is carried out by a commission of inquiry that deals only with points of fact (not law). It requires the agreement of the parties in conflict, and the final report is limited to stating the facts and, therefore, is not binding.

From early cases such as Dogger Bank (1904–1905), Tavnigrano (1912), Tiger (1917) and Tubantia (1916), where the inquiries move from only dealing with factual issues, to the inclusion of legal rulings in cases like the Red Crusader (1961), Letelier and Moffitt (1990), inquiries have evolved substantially in terms of procedure and content.²³

The value of inquiry in accordance with the Hague Conventions has been questionable.²⁴ First, the facts usually open to different interpretations can be dealt with through negotiation between the claiming parties. Second, there are other means for dispute settlement that are less cumbersome than the Hague Conventions. Third, in general few attempts to settle disputes by third parties are popular: states are more interested in advancing their views than in settling the dispute. Nevertheless, inquiry as part of an institutional framework such as United Nations or other processes to settle disputes in terms of fact-finding has on occasion been useful.²⁵

Conciliation

Conciliation implies a third-party dealing with the dispute by investigating its basis and submitting a report with suggestions for settlement.²⁶ Conciliation is a hybrid means to settle disputes because it includes elements of both inquiry and

22 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 43.

23 *Ibid.*, 44–55.

24 *Ibid.*, 56–61.

25 Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 925. See, for example, the Goldstone Report: *Human Rights in Palestine and Other Occupied Palestinian Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (UN Doc. A/HRC/12/48, 2009).

26 Conciliation means: “a method for the settlement of international disputes of any nature according to which a Commission set up by the Parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the Parties, with a view to its settlement, such aid as they may have requested.” See art.1 Regulations on the Procedure of International Conciliation by the Institute of International Law (1961); available at http://www.idi-iil.org/app/uploads/2017/06/1961_salz_02_en.pdf accessed 10/June/2019. See also J. Collier and V. Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford: Oxford University Press, 1999), 29; N. Bar-Yaacov, *The Handling of International Disputes by Means of Inquiry* (London: Oxford University Press, 1975), chapters 5 and 7; J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press,

mediation. The final report is only a proposal and, therefore, not binding.²⁷ In some cases, however, the parties may agree to something different.²⁸

Chapter 1 of the 1928 (amended in 1949) General Act on the Pacific Settlement of International Disputes included rules for conciliation.²⁹ Conciliation was to be carried out by special commissions composed of five commissioners, one nominated by each party and the rest appointed by agreement among national third parties. The proceedings to deal with factual and legal situations were to be concluded in six months and not to be held in public.

Several other treaties include conciliation as a procedure to deal with disputes. Internationally, there are examples such as the 1969 Vienna Convention on the Law of Treaties, the 1982 Convention on the Law of the Sea and the 1985 Vienna Convention on Protection on the Ozone Layer. There are other examples in every region around the world, such as the 1948 American Treaty of Pacific Settlement; the 1957 European Convention for the Peaceful Settlement of Disputes; the 1964 Protocol on the Commission of Mediation, Conciliation and Arbitration (Organization of African Unity); and the 1996 Protocol on Dispute Settlement Mechanism (ASEAN). Moreover, United Nations has used conciliation for particular issues in cases such as the Conciliation Commission for Palestine (1948)³⁰ and the Conciliation Commission for the Congo (1960).³¹

Few international disputes have been dealt with through conciliation,³² despite the fact many international instruments include conciliation. First, some treaties restrict

2017), chapter 4; Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 925–928; and many others.

27 See, for example, art. 85 (7) of the Vienna Convention on the Representation of States in their Relations with International Organizations (1975), which establishes that “The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.”

28 See, for example, art. 14 (3) of the Treaty Establishing the Organization of Eastern Caribbean States (1981), which states that “Member States undertake to accept the conciliation procedure referred to in the preceding paragraph as compulsory. Any decisions or recommendations of the Conciliation Commission in resolution of the dispute shall be final and binding on the Member States.”

29 The complete original text of the General Act on the Pacific Settlement of International Disputes is available at https://treaties.un.org/doc/Treaties/1950/09/19500920%2010-17%20PM/Ch_II_1p.pdf, accessed 10/June/2019.

30 UN General Assembly Resolution 194 (III); available at <https://unispal.un.org/DPA/DPR/unispal.nsf/5ba47a5c6cef541b802563e000493b8c/c758572b78d1cd0085256bcf0077e51a?OpenDocument>, accessed 10/June/2019.

31 Edmond J. Clinton, “The United Nations and the Congo,” *American Bar Association Journal* 47:11 (1961): 1079–1083. See also Summary of AG-020 United Nations Office for Special Political Affairs (1955–1991): available at <https://search.archives.un.org/downloads/united-nations-office-for-special-political-affairs-1955-1991.pdf>, accessed 10/June/2019.

32 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 84–87.

its application to certain classes of disputes or include several reservations for its application. Second, there are many other means to deal with an international difference, such as arbitration, that may be more practical and cost-effective approaches.³³

Arbitration

Arbitration³⁴ is particularly useful for territorial disputes.³⁵ Different from means to settle a dispute that are diplomatic in nature, such as through negotiation, mediation, inquiry and conciliation, in which the involved parties retain complete control, arbitration refers to legal issues and implies a binding decision. It is, therefore, a means for states to settle their differences by judges of their own choice based on law.³⁶

Arbitration may be included in a treaty or agreed by the parties when there is a dispute.³⁷ The tribunal appointed may include solely an equal number of national arbitrators or include a neutral member. In some circumstances, the arbitration may be conducted by a foreign head of state or government: sovereign arbitration.³⁸

33 Ian Sinclair, *The Vienna Convention on the Law of Treaties* (Manchester: Manchester University Press, 1984); available at <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:265335&datastreamId=FULL-TEXT.PDF>, accessed 10/June/2019. See in particular p. 235 which states: “No State is anxious to indulge in lengthy and expensive international conciliation or litigation. This imposes a very heavy burden upon Foreign Offices and upon their legal advisers, with the outcome far from certain.”

34 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 5; Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 951–958. See also L. Simpson and H. Fox, *International Arbitration: Law and Practice* (London: Stevens and Sons Limited, 1959); S. Schwebel, *International Arbitration: Three Salient Problems* (Cambridge: Grotius Publications, 1987); and many others.

35 Henry T. King and James D. Graham, “Origins of Modern International Arbitration,” *Dispute Resolution Journal* 51:1 (1996): 42; Carla S. Copeland, “The Use of Arbitration to Settle Territorial Disputes,” *Fordham Law Review* 67:6 (1999): 3073–3108; Todd L. Allee and Paul K. Huth, “The Pursuit of Legal Settlements to Territorial Disputes,” *Conflict Management and Peace Science* 23:4 (2006): 285–307.

36 Articles 15 (1899) 37 (1907), Hague Conventions for the Pacific Settlement of Disputes.

37 Loretta Malintoppi, “Methods of Dispute Resolution in Inter-state Litigation: When States Go to Arbitration Rather Than Adjudication,” *The Law and Practice of International Courts and Tribunals* 5:1 (2006): 133–162; Bart L. Smit Duijzentkunst and Sophia L. R. Dawkins, “Arbitrary Peace? Consent Management in International Arbitration,” *The European Journal of International Law* 26:1 (2015): 139–168.

38 See J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 89–92 for several examples of different kinds of arbitration, including the Clipperton Island Case (France and Mexico, 1931), Argentina-Chile Frontier case (1966), Beagle Channel Arbitration (Argentina and Chile, 1977), Tinoco Arbitration (Great Britain and Costa Rica, 1923), Island of Palmas Case (Netherlands and United States, 1928), and Eritrea-Yemen Arbitration (1998–2001).

The number of members, their selection and appointment of the tribunal are negotiated by the parties, as in the case of a single arbitrator.³⁹ Similarly, aspects related to the procedure the arbitrators will follow and the terms of reference are decided by the parties themselves through an agreement or *compromis*.⁴⁰ Consequently, the arbitrators are limited to answering the questions referred by the parties.

Often, decisions are based on international law. However, parties may agree that arbitrators make the decision based on some other basis, which could be municipal law⁴¹ or broad principles of fairness and reasonability.⁴² The arbitral award is binding⁴³ but may be open to interpretation, revision, rectification, appeal and nullification.

However promising arbitration seems, it has some limitations.⁴⁴ First is the reluctance of claimant states to commit to a judicial decision due to, for example, issue salience, other means for dispute settlement available to states and the history of negotiations between them.⁴⁵ Second is the lack of means in public international law to enforce the awards. Finally, and arguably, is the lack of real neutrality of the third party acting as arbitrator and, therefore, the risk of a biased decision.⁴⁶

The International Court of Justice

As with any dispute within the domestic jurisdiction, an international difference may be decided by international and regional courts. As part of the United Nations system, the International Court of Justice plays an important role in dispute settlement.⁴⁷

39 Jonathan I. Charney, "Third Party Dispute Settlement and International Law," *Columbia Journal of Transnational Law* 36 (1997), 65–89.

40 Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 955–957.

41 Trail Smelter Arbitration (United States and Canada, 1938 and 1941), Reports of International Arbitral Awards, Volume III, 1905–1982 available at http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf accessed 11/June/2019. Article IV states that: "The Tribunal shall apply the law and practice followed in dealing with cognate questions in the United States of America as well as international law and practice."

42 A. L. W. Munkman, "Adjudication and Adjustment—International Judicial Decision and the Settlement of Territorial and Boundary Disputes," *British Year Book of International Law* 46 (1972–1973), 1.

43 Stavros Brekoulakis, "The Effect of an Arbitral Award and Third Parties in International Arbitration: Res Judicata Revisited," *The American Review of International Arbitration* 16:1 (2005): 1–31.

44 Stephen E. Gent, "The Politics of International Arbitration and Adjudication," *Penn State Journal of Law and International Affairs* 2:1 (2013), 66–77.

45 Stephen E. Gent and Megan Shannon, "Decision Control and the Pursuit of Binding Conflict Management: Choosing the Ties that Bind," *Journal of Conflict Resolution* 55:5 (2011), 710–734.

46 Stephen E. Gent and Megan Shannon, "The Effectiveness of International Arbitration and Adjudication: Getting into a Bind," *The Journal of Politics* 72:2 (2010), 366–380.

47 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 6; Malcolm N. Shaw, *International Law* (Cambridge: Cambridge

The International Court of Justice is a judicial institution that makes decisions based on international law.⁴⁸ The Court only interprets existing law and does not legislate.⁴⁹ The jurisdiction of the Court may be contentious⁵⁰ or advisory.⁵¹ The former implies the capacity to decide differences between states. The latter refers to requests by qualified entities for legal advice

Only states may be parties in cases before the International Court of Justice (contentious jurisdiction).⁵² All United Nations members are *ipso facto* parties to the Statute, and non-members may follow the conditions determined by the General Assembly upon recommendation of the Security Council if they wish to do so.⁵³ The Court has jurisdiction in all cases referred by parties and related to issues included in the UN Charter, treaties or conventions in force.⁵⁴ The parties, previous special agreement⁵⁵ or compromise, may refer the difference to the Court determining its terms and the framework of reference.⁵⁶ Therefore, the

University Press, 2003), 959–1005; Malcolm N. Shaw, ed., *Rosenne's Law and Practice of the International Court: 1920–2015* (Leiden, The Netherlands: Brill, 2016); Arthur Eyf-finger and Arthur Witteveen, *The International Court of Justice 1946–1996* (The Hague, London, Boston: Kluwer Law International, 1996); and many others.

48 *The Haya de la Torre Case* (ICJ Reports, 1951); *The Northern Cameroons Case* (ICJ Reports, 1963).

49 *Legality of the Threat or Use of Nuclear Weapons* (ICJ Reports, 1966).

50 Renata Szafarz, *The Compulsory Jurisdiction of the International Court of Justice* (Dordrecht: Kluwer Academic Publishers, 1993).

51 Kenneth James Keith, *The Extent of the Advisory Jurisdiction of the International Court of Justice* (Leiden: A. W. Sijthoff, 1971).

52 Art. 34 of the Statute of the International Court of Justice.

53 Art. 93 UN Charter.

54 Arts. 36 (1) and 40 of the Statute of the International Court of Justice and art. 39 of the Rules of the Court.

55 In these eight cases, the Court found that it could not allow an application in which it was acknowledged that the opposing party did not accept its jurisdiction: *Treatment in Hungary of Aircraft and Crew of the United States of America* (United States of America v. Hungary), (United States of America v. USSR); *Aerial Incident of 10 March 1953* (United States of America v. Czechoslovakia); *Antarctica* (United Kingdom v. Argentina), (United Kingdom v. Chile); *Aerial Incident of 7 October 1952* (United States of America v. USSR); *Aerial Incident of 4 September 1954* (United States of America v. USSR); and *Aerial Incident of 7 November 1954* (United States of America v. USSR). For further details see the International Court of Justice, *Basis of the Court's jurisdiction*; available at <https://www.icj-cij.org/en/basis-of-jurisdiction> accessed 12/June/2019.

56 The following 17 cases have been submitted to the Court by means of special agreements: *Asylum* (Colombia/Peru); *Minquiers and Ecrehos* (France/United Kingdom); *Sovereignty over Certain Frontier Land* (Belgium/Netherlands); *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands); *Continental Shelf* (Tunisia/Libyan Arab Jamahiriya); *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/United States of America) (case referred to a Chamber); *Continental Shelf* (Libyan Arab Jamahiriya/Malta); *Frontier Dispute* (Burkina Faso/Republic of Mali) (case referred to a Chamber); *Land, Island and Maritime Frontier Dispute* (El Salvador/Honduras) (case referred to a Chamber); *Territorial Dispute* (Libyan Arab Jamahiriya/Chad); *Gabcikovo-Nagymaros Project* (Hungary/Slovakia); *Kasikili/Sedudu Island* (Botswana/Namibia); *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia); *Frontier Dispute* (Benin/Niger) (case referred to a

Court cannot “decide upon legal rights of third states not parties to the proceedings.”⁵⁷

The Court will apply international law such as treaties, customs and general principles of law in its deliberations.⁵⁸ Moreover, it may refer to the principles of equity and justice.⁵⁹ As in any legal proceedings, the Court deals with preliminary objections or the admissibility of the application before its merits.⁶⁰ However, different from local courts, the Court is flexible in terms of evidence.⁶¹ Importantly, the Court has the power to indicate interim or provisional measures in order to preserve the rights of either party.⁶² The remedies are mainly declaratory and may include a direction for reparation of losses or damages.⁶³ Although the judgment is final,⁶⁴ in some circumstances it may be open to interpretation⁶⁵ and revised if there is a discovery of some fact that may be decisive.⁶⁶

The main issue with the International Court of Justice and territorial disputes is the fact that these differences are not limited to legal issues but also include political realities.⁶⁷ Territorial disputes and sovereignty include many elements that are not only legal—e.g. society, economy, etc. Even assuming the issue related to sovereignty over the territory under dispute was resolved, the questions related to specificities in regard to government, population and territory would remain unanswered. Furthermore, the Court is not concerned with compliance with its decisions,⁶⁸ so its enforcement relies on the good will of the parties.⁶⁹ Finally, regardless of its potential advantages, only a very small number of contentious cases have appeared before the Court since 1945.⁷⁰

Chamber); Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore); and Frontier Dispute (Burkina Faso/Niger). For further details see the International Court of Justice, Basis of the Court’s jurisdiction; available at <https://www.icj-cij.org/en/basis-of-jurisdiction> accessed 12/June/2019.

57 Cameroon v. Nigeria (ICJ Reports, 2002), para. 238.

58 Art. 38 of the Statute of the International Court of Justice.

59 For a view on the work of the International Court of Justice, equity and international law see Malcolm N. Shaw, *International Law*, 99–103.

60 See art. 79 of the Rules of the Court 1978.

61 See Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 984–987.

62 Art. 41 of the Statute of the International Court of Justice.

63 See Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 994–996.

64 Art. 60 of the Statute of the International Court of Justice.

65 Art. 98 (1) of the Rules of the Court 1978.

66 Art. 61 60 of the Statute of the International Court of Justice.

67 See J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 162–166.

68 The Nuclear Test case, ICJ Report, 1974, 477.

69 Examples of non-compliance are Albania in the Corfu Channel Case (ICJ Reports, 1949), Iceland in the Fisheries Jurisdiction case (ICJ Reports, 1974) and Iran in the Iranian Hostages case (ICJ Reports, 1980).

70 See J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 171–176.

The Law of the Sea Convention

The Law of the Sea Convention (1982)⁷¹ includes several ways to settle disputes.⁷² States parties have the obligation to settle any dispute between them by peaceful means.⁷³ The Tribunal⁷⁴ applies the provisions of the Convention and other compatible rules of international law.⁷⁵ There is a Seabed Disputes Chamber with jurisdiction in relation to international seabed areas.⁷⁶ The Tribunal may prescribe provisional measures appropriate to preserve the respective rights of the parties or to prevent serious harm to the marine environment until a final decision is reached.⁷⁷ Additionally, the Tribunal may give advisory opinions on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.⁷⁸

The law of the sea dispute settlement provisions have received criticism because of their several limitations.⁷⁹ The proliferation of international tribunals may result in the fragmentation of substantive and procedural law with regard to dispute resolution.⁸⁰ Indeed, this abundance of tribunals seems to open questions about coordination and conflict between different courts and their interpretation of applicable law.⁸¹ In addition to this, jurisdiction is a contested issue in cases related to territorial disputes, as the differences in the South China Sea and Crimea

71 *Ibid.*, chapter 8; Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 1005–1010.

72 See in particular Part XV, section 1, which includes the general provisions about settlement of disputes.

73 Arts. 279 and 280 of The Law of the Sea Convention.

74 Annex VI of The Law of the Sea Convention.

75 Art. 293 of The Law of the Sea Convention and art. 23, Annex VI of The Law of the Sea Convention.

76 Part XI, Section 5 of The Law of the Sea Convention.

77 Art. 290 of The Law of the Sea Convention.

78 Art. 138 of the Rules of the Tribunal.

79 Shigeru Oda, "Dispute Settlement Prospects in the Law of the Sea," *International and Comparative Law Quarterly* 44:4 (1995), 863–872; Gilbert Guillaume, "The Future of International Judicial Institutions," *International and Comparative Law Quarterly* 44:4 (1995): 848–862; Elihu Lauterpacht, *Aspects of the Administration of International Justice* (Cambridge: Cambridge University Press, 1991), 20–22.

80 Alan E. Boyle, "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction," *International and Comparative Law Quarterly* 46:1 (1997): 37–54.

81 Tullio Treves, "Conflicts Between the International Tribunal for the Law of the Sea and the International Court of Justice," *New York University Journal of International Law and Politics* 31:4 (1998): 809–821.

show.⁸² Finally, despite the dedicated Tribunal and legal norms, the cases emerging are to date limited in number.⁸³

The United Nations

In addition to the International Court of Justice, three other United Nations organs have to do with dispute settlement: the Security Council, the General Assembly and the Secretariat.⁸⁴ The Security Council is the central pillar for peaceful dispute settlement.⁸⁵ In extreme cases, the Security Council may take coercive measures.⁸⁶ The General Assembly has broad powers for discussion and may make recommendations.⁸⁷ The Secretariat has functions delegated by the Security Council and the General Assembly⁸⁸ and may be requested by the interested parties or use its own initiative.⁸⁹

Although the United Nations aims to grant sovereign equality among states⁹⁰ its members do not have a real equal footing. Social and political relations between United Nations members have a direct impact in dispute settlements. The United Nations agenda for peace⁹¹ is largely dependent on whether states are willing to relinquish the use of their power to control disputes. Nevertheless, its own system reveals a contradiction: veto power in the Security Council is only granted to certain sovereign states.⁹² Moreover, the Security Council does not reflect the current global power distribution.⁹³ Similarly, the UN General

82 Irina Buga, "Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals," *International Journal of Marine and Coastal Law* 27:1 (2012): 59–95; Peter Tzeng, "Jurisdiction and Applicable Law Under UNCLOS," *Yale Law Journal* 126:1 (2016): 242–260.

83 Rosemary Rayfuse, "The Future Compulsory Dispute Settlement Under the Law of the Sea Convention," *Victoria University of Wellington Law Review* 36:4 (2005): 683–712.

84 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 10; K. V. Raman, ed., *Dispute Settlement through the United Nations* (New York: Oceana Publications, 1977); Connie Peck, *The United Nations as a Dispute Settlement System: Improving Mechanisms for the Prevention and Resolution of Conflict* (The Hague: Kluwer Law International, 1996); and many others.

85 Chapter VI of UN Charter.

86 Chapter VII of the UN Charter.

87 Arts. 10 to 14 of the UN Charter.

88 Art. 98 of the UN Charter.

89 Art. 99 of the UN Charter.

90 W. Michael Reisman, "The Constitutional Crisis in the United Nations," *The American Journal of International Law* 87 (1993): 83–100.

91 See *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping*, Report of Secretary General Boutros-Ghali, 1992; available at https://www.un.org/ruleoflaw/files/A_47_277.pdf accessed 13/June/2019.

92 Aris Alexopoulos and Dimitris Bourantonis, "The Reform and Efficiency of the UN Security Council: A Veto Player Analysis," in *Multilateralism and Security Institutions in an Era of Globalization*, edited by Dimitris Bourantonis, Kostas Ifantis and Panayotis Tsakonas (New York: Routledge, 2007).

93 Justin Morris, "UN Security Council Reform: A Counsel for the 21st Century," *Security Dialogue* 31:3 (2002): 265–277; Y. Z. Blum, "Proposals for UN Security

Assembly, at first glance a fair environment for sovereign states to participate in, has been regarded as ineffective⁹⁴ or irredeemably biased because of the different bargaining powers of its members.

Regional Organizations

The Council of Europe, the European Union, the North Atlantic Treaty Organization, the Organization of American States, the African Union, the Arab League and the Association of Southeast Asian Nations are organizations with memberships related to a particular region or cause. The degree and complexity of legal norms and procedures related to dispute settlement in these organizations varies. However, to a different degree, all of them include some form of difference settlement.⁹⁵

Despite the desirability of domestic and regional action to achieve peaceful resolution of territorial disputes, these organizations are limited in various ways.⁹⁶ Geographically, the international context that exacerbates the differences may be overlooked. Additionally, there are several current territorial disputes that include parties alien to the region or that are not part of the regional organization in question, such as the Falkland/Malvinas Islands and the United Kingdom, and the Arab-Israeli difference. Additionally, not all the regional organizations have jurisdiction over internal affairs. Finally, a common problem to any international organization is the question about enforcement of the decision once there is a settlement.

Council Reform," *American Journal of International Law* 99:3 (2005): 632–649; Jean-d'Amour K. Twibanire, "The United Nations Security Council: Imbalance of Power and the Need for Reform," *International Journal of Political Science and Diplomacy* 2 (2016): 106.

- 94 Jack E. Vincent, "Predicting Voting Patterns in the General Assembly," *The American Political Science Review* 65 (1971): 471–498; Axel Dreher, Peter Nunnenkamp and Rainer Thiele, "Does US Aid Buy UN General Assembly Votes?" *Public Choice* 136 (2008): 139–164; T. Y. Wang, "U.S. Foreign Aid and UN Voting: An Analysis of Important Issues," *International Studies Quarterly* 43 (1999): 199–210; and many others.
- 95 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 11; Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 1168–1186.
- 96 R. Allison, "Regionalism, Regional Structures and Security Management in Central Asia," *International Affairs* 80:3 (2004), 463–483; B. Buzan, and O. Wæver, *Regions and Powers: The Structure of International Security* (Cambridge: Cambridge University Press, 2003); L. Cliffe, "Regional Dimensions of Conflict in the Horn of Africa," *Third World Quarterly* 20:1 (1999): 89–111; M. Leifer, *ASEAN and the Security of South-East Asia* (London: Routledge, 1989); J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19:3 (1994): 5–49; Tullio Treves, "International Organizations as Parties to Contentious Cases: Selected Aspects," in *International Organizations and International Dispute Settlement: Trends and Prospects*, Laurence Boisson de Chazournes, Cesare Romano, and Ruth Mackenzie, eds. (New York: Transnational Publishers, 2002); and many others.

A current legal and political perspective on dispute settlement

The above brief account introduces means to settle disputes between states by the same parties (negotiation) and with the assistance of third parties (inquiry, conciliation), with or without the presence of regional and international authorities such as the International Court of Justice, or United Nations institutions.

On the legal side, there is a wide variety of norms and procedures domestically, regionally and internationally that, in theory, allow the challenger and challenged parties in a territorial dispute to permanently and peacefully settle their differences.

On the political side, however, despite the many rules, procedures and institutions and the abundant scholarly literature on the topic, more often than not these means are not widely and effectively used in dispute resolution.

Whether the answer for a more effective and applicable set of methods for dispute settlement is in the amendments of institutions such as the United Nations Security Council, the Secretariat General and improvement of their capacity to deal with disputes,⁹⁷ it is evident there are many ways to deal with these differences. The challenge is to bring the claiming parties to make use of them.

The next section focuses on the outcomes of the different means to settle disputes. Unsurprisingly, the different solutions include theoretically attractive incentives for a peaceful and permanent settlement but, in reality, always generate controversy and, therefore, lack of use, applicability, effectiveness or other issues in relation to their enforcement.

Possible remedies

Although all the international dispute settlement means introduced in the previous section present some problems, in principle they all offer ways to reach a solution. Unsurprisingly, these solutions, ranging from full independence to the maintenance of the *status quo*, are usually controversial. The *status quo*'s main feature, volatility, contradicts the goal of reaching some sort of peaceful arrangement. Since rights and obligations are not clearly defined for any of the agents because sovereignty remains undefined, none of them has the actual power to fully make use of any of these remedies, but at the same time they do not have any more legal restrictions than those of international public law, or any more political ones than those caused by the presence of the other agents.

Assuming the claiming agents decided to leave the *status quo* and opted for any of the aforementioned means to deal with the dispute, the outcomes may be classified depending on how challenger and the challenged agents interact: a) unilateral solutions; b) international-multilateral solutions; c) bilateral solutions.⁹⁸

97 For an extensive view on political and legal trends in relation to dispute settlement see J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), chapter 12.

98 The author develops in depth each of these remedies and their possible pitfalls to an achievable permanent and peaceful settlement in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New

Unilateral solutions

This group of solutions centers on one of the claiming agents taking a decision regarding sovereignty in a territorial dispute, regardless of the consequences to the others. Examples of unilateral solutions are erecting a fortress, integration or free association of the claimant party and the claimed territory, and granting independence. In all cases there is room for controversy because at least one of the agents is left out. The final settlement does not offer a peaceful and permanent understanding among all the participants in the dispute.

The opposition of the other party or parties is not taken into account, and the rights they claim are either minimized or completely ignored. This could happen in three ways: 1) the successful party denies that the other party has these rights at all; 2) the successful party admits these rights but claims that other rights overrule them; 3) the successful party admits these rights but chooses as a matter of real-politik to ignore them.

International-multilateral approaches

These remedies include other agents in addition to the original challenger and challenged parties. Regional or international organizations may participate in the negotiations. They mainly involve a freeze in regard to the dispute, and do not offer a peaceful and permanent settlement. Examples of these solutions are NATO, a United Nations trusteeship, the Antarctic Treaty formula, and participation in the International Court of Justice.

With these remedies, at least one of the claiming parties may have a more precarious situation at the negotiating table. For instance, an organization like NATO may change the domestic and regional balance in terms of bargaining power. Similarly, a trusteeship⁹⁹ and the International Court of Justice¹⁰⁰ require the consent of all the involved agents. Also, in cases of contested sovereignty over populated territories, stateless people are not UN members and therefore cannot take part in the proceedings. Finally, the Antarctic Treaty¹⁰¹ mainly refers to scientific exploration of the Antarctica, leaving the recognition of territorial

York: Routledge, Taylor and Francis Group, 2017), chapter 5. The author adapted Beck's works on this point in order to design this classification. See Peter Beck, *The Falkland Islands as an International Problem* (London and New York: Routledge, 1998). See also Peter J. Beck, "The Future of the Falkland Islands: A Solution Made in Hong Kong?" *International Affairs, Royal Institute of International Affairs* 61 (1985): 643–660; Peter J. Beck, "Looking at the Falkland Islands from Antarctica: The Broader Regional Perspective," *Polar Record* 30 (1994): 167–180; Peter J. Beck, "Britain's Falkland Future—the Need to Look Back," *The Round Table* 73 (1984): 139–152; and many others.

99 Art. 79 UN Charter.

100 See ICJ Statute, in particular art. 36.

101 For a complete version of the Antarctic Treaty see http://www.ats.aq/documents/a-ts/treaty_original.pdf.

sovereignty undecided.¹⁰² Therefore, the question about sovereignty over the disputed territory remains unaddressed.

Bilateral approaches

The sovereign agents in a territorial dispute are included in the negotiations, but the population of the disputed territory is not necessarily represented. According to public international law, sovereign states are equal international agents. However, reality may show something different—i.e. one of the sovereign states may be considerably more powerful, making its bargaining position stronger and giving it an advantage in negotiations. Examples of the bilateral approach are the condominium, the Hong Kong model (leaseback with guarantees), a sovereignty freeze, abandonment, and the Åland islands formula (titular sovereignty and autonomy).¹⁰³

All of these remedies are controversial. International condominium implies that two or more sovereign states share their respective dominion over a specific territory. It may be a reasonable solution mainly for those particular cases in which the dispute is only related to a non-populated territory, but the question about the interests of inhabitants remains unanswered. The Hong Kong model of “one country-two systems”¹⁰⁴ is a stage towards, but does not offer, a definitive solution. Also, the population of a leased territory rarely gets a say. A sovereignty freeze and abandonment imply that the dispute between the two original sovereign claimants remains and the disputed territory would remain in a political and legal limbo. Finally, titular sovereignty and autonomy assume one sovereign state and one populated territory arguing about sovereignty. Situations in which there are several claiming parties may prove too controversial for this kind of approach.

Thus far, different procedures, institutions and remedies show that there is an ample menu of means to settle disputes between states. However, in all cases there is controversy. Although the options are attractive in theory, it is a fact they are not often applied.

Despite the seemingly unpromising picture, it is possible to draw some partial conclusions:

102 Article IV of the Antarctic Treaty refers to territorial claims. See J. Peter A. Bernhardt, “Sovereignty in Antarctica,” *California Western International Journal* 5 (1975): 297–349.

103 Tore Modeen, “The International Protection of the National Identity of the Åland Islands,” *Scandinavian Studies in Law* 17 (1973): 176–210; Holger Rotkirch, “The Demilitarization of the Åland Islands: A Regime ‘in European Interests’ Withstanding Changing Circumstances,” *Journal of Peace Research* 23 (1986): 357–376; Finn Seyersted, “The Åland Autonomy and International Law,” *Nordic Journal of International Law* 51:1 (1982): 23–28; and many more.

104 Lorenz Langer, “Out of Joint? Hong Kong’s International Status from the Sino-British Joint Declaration to the Present,” *Archiv des Völkerrechts* 46 (2008): 309–344.

- There are domestic, regional and international reasons for disputes that may escalate them into conflict.
- Territorial disputes are multi-level phenomena with different dimensions.
- To secure a peaceful and definitive solution, the procedure the parties follow and the final agreement must somehow be beneficial to all the agents and must recognise their claims in some way, and the result must not be detrimental to any of the agents.
- To neutralise an external influence/interest in the conflict, the United Nations or any other party alien to the dispute (for example, United States, United Kingdom, Russia, Arab League) should not interfere.

The last section of this chapter makes use of these partial conclusions and introduces a set of pre-requisites any procedure should take into consideration in order to deal with a territorial dispute to guarantee equal footing¹⁰⁵ for the challenging and challenged parties. Thereafter, a solution to territorial disputes demonstrates how it is possible, at least as a matter of ideal theory,¹⁰⁶ to settle the difference in a way that may be convenient to all parties and that, therefore, guarantees a peaceful and permanent agreement.

Egalitarian shared sovereignty

In order to succeed in choosing a viable method and remedy in theory and in practice for a territorial dispute, the representatives of the claiming parties must bear in mind that: a) it is more likely than not that the claiming parties will be in very different situations in many areas; b) the least advantaged party may be but does not need to be the population of the disputed territory; c) territorial disputes and sovereignty itself are complex. They imply both benefits and burdens in many different areas.

To address the issue of complexity, the representatives in any method applied to deal with a dispute must first make clear how the parties will not use any

105 “Equal footing” means that all participants in any kind of procedure for dispute settlement have equal rights and obligations (regardless of their domestic, regional or international situation) before reaching the final agreement and once the agreement is in place; or that they may have different rights and obligations to which they equally agree and which are equally respected. For more details about the author’s views on “equal footing” see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapters 3, 6 and 7.

106 In what has to do with the existent and evolving tension between ideal and non-ideal theory, this monograph is restricted to claims about ideal moral theorising only, and therefore, does not include claims about practical application. This monograph is in effect an exercise in ideal theory, and does not claim it has applicability as a non-ideal theory or that it thoroughly explores the relevant non-ideal issues such as lack of compliance. See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 1.

agreement reached for their benefit only, that the agreement must not be a subterfuge for any form of domination by one or more claiming parties in relation to the other(s). It is reasonable for the representatives to agree on three basic pre-requisites in order to deal with the dispute regardless of the method they choose:

First, it is prohibited to interfere with the internal or external affairs of any of the other agents: the non-domination or non-interference principle.¹⁰⁷

Second, each agent will respect the liberties of all the involved populations, so no agreement reached can be interpreted in a way that curtails the basic non-political liberties¹⁰⁸ of any of these populations.

Third, the agents will conduct their mutual relations in light of the principles recognized by the law of peoples.¹⁰⁹

The issue is what would constitute a reasonable allocation of sovereignty between several claiming parties over a disputed territory, at least one challenger and a challenged agent. This section introduces the concept of egalitarian shared sovereignty¹¹⁰ that, combined with the three pre-requisites, offers a solution that no party may reasonably reject.¹¹¹

First, it is reasonable and likely for all parties to agree that each party has a right to participate in each aspect of sovereignty, regardless of their particular circumstances—i.e. their development or ability—because no one would want to be left out. All the claimants would have equal standing or status. All parties would have a right to participate, and all the parties should be granted an equal input into the decision-making process.

Second, the representatives would acknowledge that it would be hard to assure that all parties had the same relative situations: economic development, defense system, means for exploitation of natural resources, law, etc. Therefore, it is reasonable to think that the representatives would agree that the degree of each party's participation would vary according to each party's ability to contribute. It is also reasonable to suppose that each party would also have an interest in each aspect of sovereignty. Consequently, and bearing in mind both equal right to participate and different abilities to contribute, it is reasonable to suggest that each party would have an interest in each aspect of sovereignty being handled in the most efficient manner.

Third, the representatives may think of distributing what benefits or rights each party would enjoy depending on the level of contribution that the party makes.

107 This first pre-requisite has a broad meaning that applies to all aspects of society. It includes not only does law and politics but also culture, tradition, values, ideals, and customs.

108 For a further analysis of basic liberties and its characterisation see John Rawls, *A Theory of Justice, Revised Edition* (Oxford: Oxford University Press, 1999), 53.

109 For a thorough account of the principles see John Rawls, *The Law of Peoples* (Harvard: Harvard University Press, 1999), 37.

110 The author develops and discusses in detail the egalitarian shared sovereignty in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

111 See fn. 2.

Indeed, they may acknowledge that some parties will be able to make a greater input than others. However, an immediate problem arises: the representatives would realise that making the output dependant on the level of each party's input could result in a subterfuge for domination.

But if the representatives added a proviso to make sure that the party with greater ability and therefore greater initial participation rights would have the obligation to bring the other parties towards equilibrium, the proposal becomes reasonable.

This way of approaching territorial disputes is called egalitarian shared sovereignty and can be stated as follows:

- 1 Equal right to participate (egalitarian consensus principle)
- 2 Nature and degree of participation depends on efficiency of accomplishing the particular objective/area/activity at issue (principle of efficiency)
- 3 Each party receives a benefit (in terms of rights and opportunities) that depends on what that party contributes with (input-to-output ratio principle)

PROVISO:

But the party with greater ability and therefore greater initial participation rights has the obligation to bring the other parties towards equilibrium (equilibrium proviso)

Egalitarian shared sovereignty, at least in theory, resolves territorial disputes and sovereignty conflicts because it simply acknowledges the facts a) that territorial disputes and sovereignty are complex issues, b) that complexity comes from these issues being constituted by activities and goods that imply both benefits and burdens, and c) that the claiming agents are most probably in very different comparative situations.

Conclusion

This chapter presents several ways to deal with disputes between states, how to settle them peacefully and some of the respective outcomes. Public international law includes detailed rules and methods such as negotiation, mediation, inquiry, conciliation, arbitration; and regional and international institutions and organizations such as the United Nations, the International Court of Justice, the Organization of American States, the Arab League. Despite the myriad of procedures and institutions, reality shows that often the parties in a dispute do not use them or seek their assistance to solve their differences.

The first and second parts of the chapter presented briefly some of these procedures, institutions and possible solutions to disputes. In all cases, although the valuable elements that each of them provide make them theoretically plausible and even desirable to achieve a permanent and peaceful solution, the reality of international relations and politics shows a very different picture. Several territorial disputes remain in political and legal limbo with negative implications at the

domestic, regional and international levels. Indeed, some of these methods, institutions and remedies have been and are effective in situations where the challenger and challenged agents may leave aside reasons that otherwise would only guarantee an endless dispute that might escalate into conflict. However, these same remedies fail to observe the intricate essence of some of the most pervasive territorial disputes.

This chapter, and this monograph as a whole, acknowledges the circumstances that seem to make some territorial disputes unresolvable. Territorial disputes present several issues at stake in domestic, regional and international contexts. If disputants or referees focus on one or a few issues, such as only the legal issues related to sovereignty, and either the domestic, regional or international context without the other two, most of these remedies fail to note the complexity behind some territorial disputes. Consequently, this chapter finished by introducing a set of pre-requisites that should be taken into account before any procedure for dispute settlement is chosen. The final paragraphs presented egalitarian shared sovereignty as a way to deal with the multi-level and multi-faceted quality of these disputes that, at least in theory, no reasonable party may reject.

Bibliography

- Albin, Cecilia. *Justice and Fairness in International Negotiation*. Cambridge: Cambridge University Press, 2001.
- Alexopoulos, Aris and Bourantonis, Dimitris. "The Reform and Efficiency of the UN Security Council: A Veto Player Analysis." In *Multilateralism and Security Institutions in an Era of Globalization*, Dimitris Bourantonis, Kostas Ifantis and Panayotis Tsakonas, eds., 306–323. New York: Routledge, 2007.
- Allee, Todd L. and Huth, Paul K. "The Pursuit of Legal Settlements to Territorial Disputes." *Conflict Management and Peace Science* 23:4 (2006): 285–307.
- Allison, R. "Regionalism, Regional Structures and Security Management in Central Asia." *International Affairs* 80:3 (2004): 463–483.
- Bar-Yaacov, N. *The Handling of International Disputes by Means of Inquiry*. London: Oxford University Press, 1975.
- Beck, Peter. "Britain's Falkland Future-the Need to Look Back." *The Round Table* 73 (1984): 139–152.
- Beck, Peter. "Looking at the Falkland Islands from Antarctica: The Broader Regional Perspective." *Polar Record* 30 (1994): 167–180.
- Beck, Peter. "The Future of the Falkland Islands: A Solution Made in Hong Kong?" *International Affairs, Royal Institute of International Affairs* 61 (1985): 643–660.
- Beck, Peter. *The Falkland Islands as an International Problem*. London and New York: Routledge, 1998.
- Bercovitch, J. "International Mediation and Dispute Settlement: Evaluating the Conditions for Successful Mediation." *Negotiation Journal* 7:1 (1991): 17–30.
- Bercovitch, J. and Rubin, J. Z. *Mediation in International Relations: Multiple Approaches to Conflict Management*. London: Palgrave Macmillan, 1992.
- Bercovitch, Jacob. "Mediation at the Interstate Level: Engagement or Neutrality as the Key to Success." In *Peaceful Conflict Management on the Interstate Level*, N. Ropers, ed. Bonn: International Peace Foundation, 1995.

- Bercovitch, Jacob. *Theory and Practice of International Mediation*. London and New York: Routledge, Taylor & Francis Group, 2011.
- Bernhardt, J. Peter A. "Sovereignty in Antarctica." *California Western International Journal* 5 (1975): 297–349.
- Blum, Y. Z. "Proposals for UN Security Council Reform." *American Journal of International Law* 99:3 (2005): 632–649.
- Boyle, Alan E. "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction." *International and Comparative Law Quarterly* 46:1 (1997): 37–54.
- Brekoulakis, Stavros. "The Effect of an Arbitral Award and Third Parties in International Arbitration: Res Judicata Revisited." *The American Review of International Arbitration* 16:1 (2005): 1–31.
- Buga, Irina. "Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals." *International Journal of Marine and Coastal Law* 27:1 (2012): 59–95.
- Burton, J. "Resolution of Conflict." *International Studies Quarterly* 16:1 (1972): 5–30.
- Buzan, B. and Wæver, O. *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press, 2003.
- Charney, Jonathan I. "Third Party Dispute Settlement and International Law." *Columbia Journal of Transnational Law* 36 (1997): 65–89.
- Cliffe, L. "Regional Dimensions of Conflict in the Horn of Africa." *Third World Quarterly* 20:1 (1999): 89–111.
- Clinton, Edmond J. "The United Nations and the Congo." *American Bar Association Journal* 47:11 (1961): 1079–1083.
- Collier J. and Lowe, V. *The Settlement of Disputes in International Law: Institutions and Procedures*. Oxford: Oxford University Press, 1999.
- Copeland, Carla S. "The Use of Arbitration to Settle Territorial Disputes." *Fordham Law Review* 67:6 (1999): 3073–3108.
- Dreher, Axel, Peter Nunnenkamp and Thiele, Rainer. "Does US Aid Buy UN General Assembly Votes?" *Public Choice* 136 (2008): 139–164.
- Dupont, Christophe. "Coalition Theory: Using Power to Build Cooperation." In *International Multilateral Negotiation: Approaches to the Management of Complexity*, William I. Zartman, ed. San Francisco: Jossey-Bass Publishers, 1994.
- Eyffinger, Arthur and Witteveen, Arthur. *The International Court of Justice 1946–1996*. The Hague, London, Boston: Kluwer Law International, 1996.
- Gent, Stephen E. "The Politics of International Arbitration and Adjudication." *Penn State Journal of Law and International Affairs* 2:1 (2013): 66–77.
- Gent, Stephen E. and Shannon, Megan. "The Effectiveness of International Arbitration and Adjudication: Getting into a Bind." *The Journal of Politics* 72:2 (2010): 366–380.
- Gent, Stephen E. and Shannon, Megan. "Decision Control and the Pursuit of Binding Conflict Management: Choosing the Ties that Bind." *Journal of Conflict Resolution* 55:5 (2011): 710–734.
- Guillaume, Gilbert. "The Future of International Judicial Institutions." *International and Comparative Law Quarterly* 44:4 (1995): 848–862.
- Guzanasky, Yoel. "Lines Drawn in the Sand: Territorial Disputes and GCC Unity." *The Middle East Journal* 70:4 (2016): 543–559.
- Keith, Kenneth James. *The Extent of the Advisory Jurisdiction of the International Court of Justice*. Leiden: A. W. Sijthoff, 1971.

- King, Henry T. and Graham, James D. "Origins of Modern International Arbitration." *Dispute Resolution Journal* 51:1 (1996): 42.
- Kleiboer, Marieke. "Understanding Success and Failure of International Mediation." *Journal of Conflict Resolution* 40:2 (1996): 360–389.
- Langer, Lorenz. "Out of Joint? Hong Kong's International Status from the Sino-British Joint Declaration to the Present." *Archiv des Völkerrechts* 46 (2008): 309–344.
- Lauterpacht, Elihu. *Aspects of the Administration of International Justice*. Cambridge: Cambridge University Press, 1991.
- Leifer, M. *ASEAN and the Security of South-East Asia*. London: Routledge, 1989.
- Lillich, Richard B., ed. *Fact-Finding Before International Tribunals: Eleventh Sokol Colloquium*. Ardsley-on-Hudson, NY: Transnational Public Inc., 1991.
- Lutmar, Carmela and Terris, Lesley. "What do they Want? Rebels' Objectives and Civil War Mediation." *Peace Economics, Peace Science and Public Policy* 24:4 (2018): 1–7.
- Malintoppi, Loretta. "Methods of Dispute Resolution in Inter-state Litigation: When States Go to Arbitration Rather Than Adjudication." *The Law and Practice of International Courts and Tribunals* 5:1 (2006): 133–162.
- McLaughlin Mitchell, Sara. "Mediation in Interstate Disputes." *International Negotiation* 19 (2014): 191–200.
- Mearsheimer, J. "The False Promise of International Institutions." *International Security* 19:3 (1994): 5–49.
- Merrills, J. G. *International Dispute Settlement*. Cambridge: Cambridge University Press, 2017.
- Modeen, Tore. "The International Protection of the National Identity of the Aland Islands." *Scandinavian Studies in Law* 17 (1973): 176–210.
- Morris, Justin. "UN Security Council Reform: A Counsel for the 21st Century." *Security Dialogue* 31:3 (2002): 265–277.
- Munkman, A. L. W. "Adjudication and Adjustment—International Judicial Decision and the Settlement of Territorial and Boundary Disputes." *British Year Book of International Law* 46 (1972–1973): 1.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor and Francis Group, 2017.
- O'Neill, Barry. "International Negotiation: Some Conceptual Developments." *Annual Review of Political Science* 21:1 (2018): 515–533.
- Oda, Shigeru. "Dispute Settlement Prospects in the Law of the Sea." *International and Comparative Law Quarterly* 44:4 (1995): 863–872.
- Peck, Connie. *The United Nations as a Dispute Settlement System: Improving Mechanisms for the Prevention and Resolution of Conflict*. The Hague: Kluwer Law International, 1996.
- Peters, Anne. "International Settlement: A Network of Cooperation Duties." *European Journal of International Law* 14:1 (2003): 1–34.
- Raman, K. V., ed. *Dispute Settlement through the United Nations*. New York: Oceana Publications, 1977.
- Rawls, John. *A Theory of Justice, Revised Edition*. Oxford: Oxford University Press, 1999.
- Rawls, John. *The Law of Peoples*. Harvard: Harvard University Press, 1999.
- Rayfuse, Rosemary. "The Future Compulsory Dispute Settlement Under the Law of the Sea Convention." *Victoria University of Wellington Law Review* 36:4 (2005): 683–712.
- Reisman, W. Michael. "The Constitutional Crisis in the United Nations." *The American Journal of International Law* 87 (1993): 83–100.

- Rotkirch, Holger. "The Demilitarization of the Åland Islands: A Regime 'in European Interests' Withstanding Changing Circumstances." *Journal of Peace Research* 23 (1986): 357–376.
- Salacuse, J. W. "Lessons for Practice." In *Power and Negotiation*, I. W. Zartman and J. Z. Rubin, eds. Michigan: Ann Arbor, 2000.
- Scanlon, T.M. "Contractualism and Utilitarianism." In *Utilitarianism and Beyond*, Amartya Sen and Bernard Williams, eds. Cambridge: Cambridge University Press; Paris: Editions de la Maison des Sciences de l'Homme, 1982.
- Schwebel, S. *International Arbitration: Three Salient Problems*. Cambridge: Grotius Publications Limited, 1987.
- Seyersted, Finn. "The Åland Autonomy and International Law." *Nordic Journal of International Law* 51:1 (1982): 23–28.
- Shaw, Malcolm N., ed. *Rosenne's Law and Practice of the International Court: 1920–2015*. Leiden: Brill, 2016.
- Shaw, Malcolm N. *International Law*. Cambridge: Cambridge University Press, 2003.
- Simpson, L. and Fox, H. *International Arbitration: Law and Practice*. London: Stevens and Sons Limited, 1959.
- Sinclair, Ian. *The Vienna Convention on the Law of Treaties*. Manchester: Manchester University Press, 1984.
- Smit Duijzentkunst, L. Bart L. and Dawkins, Sophia L. R. "Arbitrary Peace? Consent Management in International Arbitration." *The European Journal of International Law* 26:1 (2015): 139–168.
- Starkey, Brigid, Mark A. Boyer and Wilkenfeld, Jonathan. *Negotiating a Complex World: An Introduction to International Negotiation*. Lanham, MD: New Millennium Books in International Studies, Rowman and Littlefield, 2005.
- Starkey, Brigid, Mark A. Boyer and Wilkenfeld, Jonathan. *International Negotiation in a Complex World*. Lanham, MD: New Millennium Books in International Studies, Rowman and Littlefield, 2016.
- Stein, Janice Gross. *Getting to the Table: The Process of International Prenegotiation*. Baltimore: Johns Hopkins University Press, 1989.
- Sun, Degang and Zoubir, Yahia. "China's Participation in Conflict Resolution in the Middle East and North Africa: A Case of Quasi-Mediation Diplomacy?" *Journal of Contemporary China* 27:110 (2018): 224–243.
- Szafarz, Renata. *The Compulsory Jurisdiction of the International Court of Justice*. Dordrecht: Kluwer Academic Publishers, 1993.
- Touval, Saadia and Zartman, I. William, eds. *International Mediation in Theory and Practice*. Boulder: Westview Press, 1985.
- Treves, Tullio. "Conflicts Between the International Tribunal for the Law of the Sea and the International Court of Justice." *New York University Journal of International Law and Politics* 31:4 (1998): 809–821.
- Treves, Tullio. "International Organizations as Parties to Contentious Cases: Selected Aspects." In *International Organizations and International Dispute Settlement: Trends and Prospects*, Laurence Boisson de Chazournes, Cesare Romano and Ruth Mackenzie, eds., 37–48. New York: Transnational Publishers, 2002.
- Twibanire, Jean-d'Amour K. "The United Nations Security Council: Imbalance of Power and the Need for Reform." *International Journal of Political Science and Diplomacy* 2 (2016): 106.
- Tzeng, Peter. "Jurisdiction and Applicable Law Under UNCLOS." *Yale Law Journal* 126:1 (2016): 242–260.

- Vincent, Jack E. "Predicting Voting Patterns in the General Assembly." *The American Political Science Review* 65 (1971): 471–498.
- Wallensteen, Peter and Svensson, Isak. "Talking Peace: International Mediation in Armed Conflicts." *Journal of Peace Research* 51:2 (2014): 315–327.
- Wang, T. Y. "U.S. Foreign Aid and UN Voting: An Analysis of Important Issues." *International Studies Quarterly* 43 (1999): 199–210.

Part 3



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6 Territorial disputes in the Americas

Introduction

This chapter introduces and explores controversial cases in the Americas.¹ From ongoing situations like the Falkland/Malvinas Islands to those that are now resolved in law but still present controversy such as the Mexico-United States border, and San Andres and Providencia, the Americas include territorial issues deeply rooted in people's perceptions, needs and the past. This chapter demonstrates why these territorial disputes seem to continue endlessly, trapped in a legal and political limbo.

The analysis shows how territorial disputes have a multi-faceted and multi-layered nature that includes law, politics, nationalism, national identity, natural resources, prestige and many other elements and issues in one or more of the domestic, regional and international dimensions. The chapter explores an often-overlooked component that is central to the Americas and several territorial disputes across the continent: the right of indigenous peoples versus the European "right-peopling"² that still generates debates relevant to the ongoing nature of some of these differences.

The differences between Peru and Ecuador, Colombia and Nicaragua, Costa Rica and Nicaragua, Mexico and United States, and some other disputes demonstrate that most of the territorial disputes in the Americas date back to colonial times and the way in which the former colonial powers divided territory that was once sociologically integrated. These differences show, too, that although the claiming parties achieve a settlement, domestic, regional and international issues may still turn the situation volatile and regional guarantors are key in maintaining the peace.

- 1 The author uses terms like "America," "Americas," and "Americans," to refer to the American continent and its population and not to the United States of America as a single state or its population. For the latter, the author applies expressions such as "United States" or "the people of the United States."
- 2 Oded Haklai and Nephytos Loizides, "Settlers and Conflict Over Contested Territories," in Oded Haklai and Nephytos Loizides, *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts* (Stanford, California: Stanford University Press, 2015), 1–16.

Common roots to disputes

All major territorial differences in the Americas have their roots in the colonial period.³ Colonialism resulted in artificial borders in America. Formerly cohesive communities were divided or decimated. It is a fact some of these communities had relations that were far from peaceful before colonial times. Yet, it is also true that some areas have been in constant struggle since then. Territorial disputes (inter-states and within the newly formed states) have translated into poverty, humanitarian crisis, arms trafficking, guerrilla activity and many more negative outcomes.⁴

The Europeans fixed American boundaries based on European political considerations, and usually without regard to tribal and ethnological factors. As a result of the European partition, several American boundaries grouped together different ethnic groups in a single state, divided ethnic or national groups or created a state with physical characteristics that hindered social, political or economic stability.

There are three clear periods that distinguish how the territory in the Americas was divided before the European intervention: sociologically, between the European dominance of the continent and American states independence; politically, only centered on European interests; and after each individual state in the Americas achieved different forms of self-government.

Pre-Columbian times

The population in the New World was between 54 and 112 million in Pre-Columbian times.⁵ However, by the time of colonization, fewer than 10 million indigenous people survived.⁶

The populations were either part of great empires—i.e. Aztecs, Mayas and Incas—or formed disseminated tribes. In all cases, the geographical distribution had to do with a religious component tied to basic needs such as the provision of food, safe surroundings and access to water. Some populations achieved a highly

3 David Downing, *An Atlas of Territorial and Border Disputes* (London: New English Library, 1980), 84; Peter Calvert, *Boundary Disputes in Latin America* (London: Institute for the Study of Conflict, 1983); Jack Child, *Geopolitics and Conflict in South America* (New York: Praeger, 1985); Gordon Ireland, *Boundaries, Possessions, and Conflicts in South America* (Cambridge: Harvard University Press, 1938); and many more.

4 Paul R. Hensel, "One Thing Leads to Another: Recurrent Militarized Disputes in Latin America, 1816–1986," *Journal of Peace Research* 31:3 (1994): 281–297; Paul R. Hensel, "Contentious Issues and World Politics: The Management of Territorial Claims in the Americas, 1816–1992," *International Studies Quarterly* 45:1 (2001): 81–109.

5 William M. Denevan, *The Native Population of the Americas in 1492* (Madison: University of Wisconsin Press, 1992); Henry F. Dobyns, "An Appraisal of Techniques with a New Hemispheric Estimate," *Current Anthropology* 7:4 (1966): 395–416.

6 Noble David Cook, *Born to Die: Disease and the New World Conquest, 1492–1650* (Cambridge: Cambridge University Press, 1998).

advanced development in terms of language, beliefs, sciences, social fairness, economy and politics.⁷

In terms of borders, there were already territorial disputes mainly in cases of expansion. Some of the populations were more prone to territorial conquest than others.⁸

Post-Columbian but pre-independence times

With little regard to the original occupants of the land, the European colonial times marked a change in the socio-political dynamics across the Americas. Although English, French, Dutch, Portuguese and Spanish conquests have their own peculiarities in the way they dealt with local populations, all cases resulted in a profound change. The former Aztec, Mayan and Inca Empires were dismantled and many tribes simply became extinct.⁹

In terms of territorial definition, European rulers created borders using European understanding of concepts such as sovereignty and state. See, for example, the Papal bulls of Alexander VI *Inter caetera*, *Inter caetera II*, *Eximiae devotionis* and *Dudum siquide*. *Inter caetera* grants the Spanish monarchs sovereignty *erga omnes* over the territories to the west in the Americas while *Inter caetera II* explicitly includes Portuguese sovereignty and a line of demarcation.¹⁰ Unsurprisingly, none of these documents mention the indigenous population.

Post-independence times

The states formed after colonial times applied the principle of *uti possidetis juris* by which they assumed to have sovereignty over their formerly colonial areas.¹¹ Nevertheless, these previously “settled” borders proved to be unclear or non-existent and generated competing claims that resulted in territorial disputes.¹²

7 Hector Diaz Polanco, *Indigenous Peoples in Latin America: The Quest for Self-Determination* (New York: Routledge: 2018); Susana Lobo, Steve Talbot and Traci L. Morris, eds., *Native American Voices: A Reader* (London and New York: Routledge, 2010); Michael P. Closs, ed., *Native American Mathematics* (Austin: University of Texas, 1997); and many more.

8 Geoffrey W. Conrad and Arthur A. Demarset, *Religion and Empire: The Dynamics of Aztec and Inca Expansionism* (Cambridge: Cambridge University Press, 1984).

9 Linda A. Newson, “The Demographic Collapse of Native Peoples of the Americas, 1492–1650,” *Proceedings of the British Academy* 81 (1993): 247–288.

10 H. Vander Linden, “Alexander VI and the Demarcation of the Maritime and Colonial Domains of Spain and Portugal, 1493–1494,” *The American Historical Review* 22:1 (1916): 1–20.

11 Steven R. Ratner, “Drawing a Better Line: Uti Possidetis and the Borders of New States,” *American Journal of International Law* 90:4 (1996): 590–624; Malcom N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 446–451; Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 2003), 129–130; and many others.

12 Alan J. Day, ed., *Border and Territorial Disputes* (Essex: Longman, 1982), 332–333.

At this stage, the Monroe, Calvo and Drago doctrines were central to preventing the formerly colonial powers from interfering with the newly formed states in the Americas.¹³ The Monroe Doctrine appeared in the 19th century when European states intended to recover their colonies in the Americas. The President of the United States proclaimed in one of his speeches (December 2, 1823) what later would be considered basic principles of public international public: a) no colonization, b) non-intervention of European states in the affairs of America, and c) reciprocal non-intervention in European affairs. The Calvo and Drago doctrines are similar in that they prohibit the intervention of a sovereign state if the purpose of that intervention is solely to oblige the target state to fulfil its international financial obligations. They are also referred to European intervention in American countries and their internal affairs (specifically, Venezuela and its international public debt in 1901).

From the above brief account, there is an indication that territorial disputes in the Americas are rooted in colonial times. The chapter presents below a sample of these differences to explore whether there is any truth in this claim. If that were the case, it would be significant to ask whether the former colonial powers a) still benefit from their past policies in the Americas, b) benefit from new ventures (in particular in the case of neo-colonial practices), and c) should be held responsible for past wrong-doings. In Pogge's words:

The existing radical inequality is deeply tainted by how it accumulated through one historical process that was deeply pervaded by enslavement, colonialism, even genocide. The rich are quick to point out that they cannot inherit their ancestor's sins. Indeed. But how can they then be entitled to the fruits of these sins: to their huge inherited advantage in power and wealth over the rest of the world? If they are not so entitled, then they are, by actively excluding the global poor from their lands and possessions, contributing to their deprivation.¹⁴

Brevitatis causa, because the monograph centers on territorial disputes, global justice is brought in here solely to help understand whether there is an option for peaceful and permanent settlements, rather than using territorial disputes to solve global justice issues.

13 See Elihu Root, "The Real Monroe Doctrine," *American Society of International Law* 8 (1914): 6–22; Mark T. Gilderhus, "The Monroe Doctrine: Meanings and Implications," *Presidential Studies Quarterly* 36 (2006): 5–16; Amos S. Hershey, "The Calvo and Drago Doctrines," *The American Journal of International Law* 1 (1907): 26–45; Luis M. Drago and H. Edward Nettles, "The Drago Doctrine in International Law and Politics," *The Hispanic American Historical Review* 8 (1928): 204–223; Crammond Kennedy, "The Drago Doctrine," *The North American Review* 185 (1907): 614–622; and many others.

14 Thomas Pogge, "Poverty and Human Rights," available at: https://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_Summary.pdf accessed 28/June/2019.

In that vein, the chapter explores a selection of ongoing territorial disputes in the Americas. Although the historical element is a necessary condition for the birth of all these territorial disputes, it is not a sufficient condition for their continuation.¹⁵ They continue because of a combination of domestic, regional and international issues. The historical claim is often one of many subterfuges to keep the territorial dispute in a legal and political limbo because the stalemate offers a higher political return to those in power than a peaceful and permanent arrangement would.

The choices have to do with differences that are still unresolved or, if they have been resolved in law, that still generate controversy between the parties that took part in the settlement agreement. In all cases there is a common thread: all the territorial disputes have their origin in colonial times.

Because the central point of this chapter is to demonstrate why these territorial disputes seem to continue endlessly, the next sections focus on the elements that can work against a final solution. Specifics related to each individual difference, such as historical entitlement, in terms of their origin and other elements that may have to do with the territorial dispute itself but are not relevant to its continuation, are briefly presented solely to put each territorial dispute in context. In all cases, there is a brief introduction to the colonial roots behind the dispute, a summary of the main issues at stake and their impact in the domestic, regional and international context, and finally an individual and partial conclusion to bring to light the reasons why these differences are still a matter of controversy and how regional cooperation may enhance the possibility of peaceful dispute settlement.

The reason to proceed this way has to do with the fact that elements common to many of these disputes are not often identified because of the fragmented way they are studied. By reviewing these different disputes following the same steps, there is a possibility of integrating the findings and drawing more general theories of international law and politics in order to generalize behavior in a clear, cohesive and concise manner. Consequently, it becomes possible to sharpen the focus and identify more clearly variables that in principle may appear to be specific to a certain dispute.

Ongoing European presence in the Americas

The Falklands/Malvinas Islands

There are a few remaining cases in America of European presence. The Hans island dispute between Canada and Denmark¹⁶ and the Marouini River tract

15 In fact, the historical argument should be neutralized in any negotiation in a territorial dispute if the parties aim to settle the difference. For the author's views about historical entitlement and the futility of the just acquisition principle in solving disputes see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

16 Christopher Stevenson, "Hans Off!: The Struggle for Hans Island and the Potential Ramifications for International Border Dispute Resolution," *Boston College International and Comparative Law Review* 30:1 (2007): 263–275; A. H. Kessel, "Canadian

dispute between Suriname and French Guiana¹⁷ are part of the colonial legacy in the new continent.

Arguably, the most notable ongoing territorial dispute in the Americas that include a former colonial power is over the Falklands/Malvinas Islands. This dispute started as early as 1833, since the British settled.¹⁸ The territory at issue between Argentina and the United Kingdom include the islands and their dependencies, the South Georgia and South Sandwich Islands. The United Kingdom and Argentina have had continuous presence and/or claimed exclusive sovereign rights over the islands since 1833, both bilaterally and internationally with a climax in 1982 with a war between the two.

Argentina's official position is that it has sovereignty over the islands based on historical entitlement and on the fact the United Kingdom is in direct violation of the principle of territorial integrity.¹⁹ The United Kingdom maintains that the Falkland/Malvinas Islands are an Overseas Territory of the United Kingdom and, consequently, are an Associated Territory of the European Union.²⁰ Meanwhile, the Falkland/Malvinas Islands official position is to acknowledge the right to self-determination²¹ and the aim to retain its links with the United Kingdom as a British Overseas Territory, self-governing, except for defense and foreign affairs. Sovereignty for the islanders, therefore, is not up for discussion.²²

Arctic Sovereignty: Myths and Realities," in *Governing the North American Arctic*, edited by D. A. Berry, N. Bowles and H. Jones (London: Palgrave Macmillan, 2016), 242–246.

17 Thomas W. Donovan, "The Marouini River Tract and Its Colonial Legacy in South America," in *Chicago-Kent Journal of International and Comparative Law* 4 (2004): 1–28.

18 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 7; Alan J. Day, ed., *Border and Territorial Disputes* (Essex: Longman, 1982), 340–345; Peter Beck, *The Falkland Islands as an International Problem* (London and New York: Routledge, 1998); Peter Beck, "The Future of the Falkland Islands: A Solution Made in Hong Kong?" *International Affairs* 61 (1985): 643–660; Peter Beck, "Looking at the Falkland Islands from Antarctica: The Broader Regional Perspective," *Polar Record* 30 (1994): 167–180; Peter Beck, "Britain's Falkland Future—the Need to Look Back," *The Round Table* 73 (1984): 139–152; Peter Beck, "Cooperative Confrontation in the Falkland Island Dispute," *Journal of Inter-American Studies and World Affairs* 24 (1982): 37–57. For official historical accounts see <http://www.falklands.gov.fk/our-people/our-history/> (UK) and <https://www.cancilleria.gob.ar/es/politica-exterior/cuestion-malvinas/antecedentes/antecedentes-historicos> (Argentina), both accessed 17/June/2019.

19 Argentina's official position at the United Nations, available at <https://www.cancilleria.gob.ar/es/politica-exterior/cuestion-malvinas/malvinas-en-naciones-unidas>, accessed 18/June/2019.

20 United Kingdom Parliament files, The House of Lords (27 March, 2017), available at <http://researchbriefings.files.parliament.uk/documents/LIF-2017-0028/LIF-2017-0028.pdf>, accessed 18/June/2019.

21 For self-determination see chapter 3.

22 Official Falkland/Malvinas Islands position available at <https://www.falklands.gov.fk/self-governance/relationship-with-argentina/>, accessed 18/June/2019.

According to the 2012 census²³ the islands had 2,841 inhabitants.²⁴ Most of them (59%) considered themselves “Falkland Islanders” and 29% identified themselves as British.²⁵ In March, 2013 the Falkland/Malvinas islanders voted in a referendum whether they wanted to remain as British Overseas Territory. The number of ballot papers issued was 1,522 while the votes cast at the referendum were 1,518. With a 92% turnout, there were 1,513 (99.8%) “Yes” votes and three (0.2%) “No” votes.²⁶

The Falkland/Malvinas Islands territorial dispute includes a combination of domestic, regional and international contexts²⁷ creating a stalemate. On the surface, the dispute seems to be centered on very clearly defined issues²⁸ such as the historical claim, the principle of territorial integrity, economic value of exploring and exploiting the territory’s natural resources, and the geostrategic location of the islands and their dependencies and, potentially, part of Antarctica.

Although a stalemate may seem negative and governments are assumed to seek peaceful and permanent dispute settlement, the *status quo* in the Falklands/Malvinas serves other purpose and, therefore, guarantees an endless legal and political limbo. Huth explains the dynamics in a simple yet illuminating manner:

[...] very often political leaders are not willing to take risks and undertake diplomatic initiatives that will break a long-standing stalemate in negotiations. Furthermore, leaders themselves are socialized into viewing the target as an adversary and, as a result, they are not predisposed to view concessions as a legitimate option. Furthermore, [...] a history of military conflict with the target can be used by the military to justify larger budgets [...]. The combined effect, then, is that the idea of offering concessions and proposing a unilateral initiative to break the stalemate is a policy option quite difficult to get on the policy agenda of political leaders within the challenger. Few voices are advocating such policies within the challenger, and the prevailing climate of opinion (both mass and elite) is opposed to such a change in policy.²⁹

[...] leaders were typically constrained by domestic political forces to be very cautious in moving toward a compromise settlement, since popular and elite opinion, and often the military, was opposed to such a policy. [...] In

23 Falkland/Malvinas Islands Census Statistics 2012 <http://www.falklands.gov.fk/headline-results-of-2012-falkland-islands-census-released/>, accessed 18/June/2019.

24 As non-residents, military personnel were not included in the census. Excluding contractors at Mount Pleasant Airfield (MPA), the population of the Falkland Islands was 2,563 at the time of the census.

25 Falkland/Malvinas Islands Census Statistics 2012, *op. cit.*

26 Official results of the referendum on the Political Status of the Falkland/Malvinas Islands available at <https://www.falklands.gov.fk/results-of-the-referendum-on-the-political-status-of-the-falkland-islands/>, accessed 18/June/2019.

27 For an understanding of the domestic, regional and international contexts in relation to territorial disputes, see chapter 4.

28 For an understanding of issues at stake in relation to territorial disputes, see chapter 4.

29 Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 2001), 171–172.

most situations the leader's position of domestic power and authority was better served by continuing confrontation [...] ³⁰

In tune with this, for the internal context, it is important to observe how Britons and Argentineans refer to each other when they discuss the Falkland/Malvinas Islands issue. On both sides, the views are extremely biased and polarized with "positive self-presentation and negative other-presentation."³¹ The international context plays a role in terms of prestige because great powers would opt to go to war to preserve their status even if the practical results seem trivial.³² Unsurprisingly, politicians and governments in Argentina and the United Kingdom have not reached a settlement to the dispute since the internal, regional and international payoffs are higher by simply keeping the *status quo*. The direct influence over the domestic political status of the ruling power of the Falkland/Malvinas 1982 war at the time and currently the ongoing territorial dispute over the islands is unquestionable.³³

While the Falklands/Malvinas are an Overseas Territory of the United Kingdom and, consequently, are an Associated Territory of the European Union, Argentina seems to leave the regional context outside of the dispute, unless it can help garner support from other continental actors. In that respect, it is open to

30 *Ibid*, 178–179.

31 Ray Chung Hang Leung, "The Discursive Positioning of the Falkland Islands (Las Islas Malvinas): A Corpus-Based Collocational Analysis of British and Argentinian Websites," *Global: A Journal of Language, Culture and Communication* 5 (2017): 1–31.

32 Matthieu Grandpierron, "Preserving 'Great Power Status': The Complex Case of the British Intervention in the Falklands (1982)," *Croatian International Relations Review* 23:79 (2017): 127–156.

33 David Sanders, Hugh Ward, David Marsh and Tony Fletcher, "Government Popularity and the Falklands War: A Reassessment," *British Journal of Political Science* 17:3 (1987): 281–313; Helmut Norpoth, "The Falklands War and Government Popularity in Britain: Rally without Consequence or Surge without Decline?" *Electoral Studies* 6:1 (1987): 3–16; David Monaghan, *The Falklands War* (London: Palgrave Macmillan, 1998), 1–38; James Aulich, *Framing the Falklands War: Nationhood, Culture, and Identity* (Milton Keynes: Open University Press, 1992), 133; Jack S. Levy and Lily I. Vakili, "Diversion Action by Authoritarian Regimes: Argentina and the Falklands/Malvinas Case," in *The Internationalization of Communal Strife*, edited by Manus I. Midlarsky (London: Routledge, 1992), 118–146; Helardo Muñoz, "Efectos y Lecciones del Conflicto de las Malvinas," *Estudios Internacionales* 15:60 (1982): 499–512; Sabrina Morán, "The Malvinas War in the Democratic Transition in Argentina. Conflicts and Tension within A Demalvinized Political Agenda," *Cuadernos de Marte* 9:15 (2018): 173–207; Vaughne Miller, "Argentina and the Falkland Islands," in *House of Commons Library* 2012 available at <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05602>, accessed 19/June/2019; and many others. For a very detailed and current study of the Falklands/Malvinas case, see Norberto Consani, Federico Martín Gomez and Leandro Enrique Sánchez, *Malvinas y la Construcción de un Reclamo Soberano: Pasado, Presente y Futuro* (La Plata: Universidad Nacional de La Plata, 2017) available at http://www.iri.edu.ar/wp-content/uploads/2017/03/libro_refem_malvinas_construccion.pdf, accessed 19/June/2019.

question whether Argentina's bargaining position could be strengthened by shifting the national-cause stance for a more regional approach: instead of "the Malvinas/Falklands are Argentine,"³⁴ "the Malvinas/Falklands are American (or Latin American)."³⁵

Neo-colonialism

Mexico-United States border

Technically, there is no territorial dispute between Mexico and the United States in terms of their international borders. However, due to the historical, financial and sociological backgrounds, these long-settled boundaries are the subject of ongoing controversy.

The borderland has been continuously occupied for millennia. The indigenous inhabitants were either distributed in tribes or integrated into the Aztec Empire. With the arrival of the Spaniards, most of the areas came under the control of the Spanish kings until Mexico's independence in 1821. However, Mexico found resistance in the northwest by Comanches, Apaches and other indigenous peoples. By the end of the 19th century, the United States gained territory from Mexico and the aforementioned tribes. After the Mexican-US war between 1846 and 1848, the international border was agreed by the Treaty of Guadalupe Hidalgo in 1848.³⁶

Despite the settlement, in recent years the Mexico-United States border has gained domestic, regional and international relevance because of migration issues, nationalism and actions intended to bolster political prestige. The 2,000-mile (3,200-kilometre) border is the busiest in the world in terms of daily crossings of people and commerce with estimates of one million people and US\$1.5 billion worth of goods.³⁷ Together with legal migrants, economic

34 Magdalena Lisińska, "Is the Archipelago a Political Tool? The Role of the Falkland Islands Sovereignty Dispute in Argentina Policy During the Kirchner Era," *Ad American Journal of American Studies* 17 (2016): 119–134; Silvia R. Tandeciarz, *Citizens of Memory: Affect, Representation, and Human Rights in Postdictatorship Argentina* (Lewesburg: Bucknell University Press, 2017), xvii.

35 Ignacio Gutierrez Bróndolo, "Malvinas en la Nueva Perspectiva Latinoamericana," *Universidad Nacional de Rosario* (2017), available at <https://rephip.unr.edu.ar/bitstream/handle/2133/9011/MALVINAS%20EN%20LA%20NUEVA%20PERSPECTIVA%20%20LATINOAMERICANA.pdf>, accessed 28/June/2019; Alberto Monzón and Claudio Briceño, "Las Islas del Atlántico Sur y la Integración Latinoamericana," *Humania del Sur* 7:12 (2012): 51–72; Stella Krepp, "A View from the South: the Falklands/Malvinas and Latin America," *Journal of Transatlantic Studies* 15:4 (2017): 1–18; and many others.

36 For a more detailed account see C. J. Alvarez, "The United States-Mexico Border," in *Oxford Research Encyclopedia of American History* available at <https://oxfordre.com/amERICANhistory/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-384?print=pdf>, accessed 19/June/2019.

37 Jacqueline Mazza, "The US-Mexico Border and Mexican Migration to the United States: A 21st Century Review," *SAIS Review of International Affairs* 37:2 (2017): 33–47.

disparity from one side of the border to the other, civil wars and violence have resulted in people fleeing illegally to the United States. Consequently, the United States government has enacted legislation since at least Eisenhower to regulate the migration, with Donald Trump characterizing the issue as a “problem” and arguing for the necessity of stronger border controls and the building of a wall between the two states.³⁸

Whether there is an immigration or a humanitarian crisis is arguable.³⁹ In any case, although there is not *per se* a territorial dispute, the historical, sociological, political and financial components of this kind of differences are present. More specifically, political leaders use the regional and international context as a subterfuge to obtain domestic consensus. The benefits to them of a volatile situation are higher than what they would gain from a peaceful and permanent understanding between Mexico and the United States in relation to their common border.

Despite their differences, the Mexico-United States border and the Falklands/Malvinas case share at least two common features: the involved parties maintain the issue exclusively between them and one of the parties is considerably stronger than its counterpart. In the Falklands/Malvinas case, the United Kingdom is more advantaged than Argentina in terms of financial, social and political stability. It is also a NATO member. Similarly, the United States in comparison to Mexico, seems able to do as it wishes in terms of the common border.⁴⁰ Like Argentina in the Falklands/Malvinas case, Mexico maintains the border issue within a local or regional (only bi-lateral) context. It would be challenging for Mexican representatives to argue for the regional or continental relevance of this difference by welcoming all other Latin American actors to support its position.

Guantanamo Bay

As with the previous territorial disputes, Guantanamo finds its roots in colonial times.⁴¹ The United States went to war against Spain in 1898 because,

38 For an analysis of statements by Donald Trump addressing the US-Mexican border see Michèle Lamont, Bo Yun Park, and Elena Ayala-Hurtado, “Trump’s Electoral Speeches and His Appeal to the American White Working Class,” *British Journal of Sociology* 68:1 (2017): 153–180.

39 William C. Gruben and Tony Payan, “Illegal Immigration on the U.S.-Mexico Border: Is it Really a Crisis?” (Houston, Texas: Rice University, The James A. Baker III Institute for Public Policy, 2014), available at https://www.bakerinstitute.org/media/files/files/4d562970/MC-Immig-Gruben_Payan-101714.pdf accessed 19/June/2019; Maureen Meyer, Adam Isacson and Carolyn Scorpio, “Not a National Security Crisis: The U.S.-Mexico Border and Humanitarian Concerns, Seen from El Paso,” *Advocacy for Human Rights in the Americas*, 2016 available at https://www.wola.org/wp-content/uploads/2016/10/WOLA_NoNationalSecurityCrisis_October2016.pdf accessed 19/June/2019.

40 See the author’s view on domination in chapter 3.

41 Lynn Bender, *Cuba vs. United States* (San Juan: Inter American University Press, 1981).

geographically and commercially, the United States understood Cuba as being in the US area of influence, due to the ongoing tensions with the Spanish government⁴² and, in sum, as a result of a clash of imperialist interests between the United States, emerging as a new great power, and a weakened and declining Spain.⁴³ With the United States victory, by the Treaty of Paris in 1898 Spain relinquished all claim of sovereignty over Cuba while the United States occupied the country.⁴⁴ In 1901 the United States, with the Platt Amendment, transferred the government and control of Cuba to its people.⁴⁵ Sovereignty over Guantanamo⁴⁶ is not split into two, between Cuba and the United States.⁴⁷ Guantanamo is legally leased by Cuba to the United States.⁴⁸ The United States government distinguishes between the Naval Station, Guantanamo Bay, and its military commissions and detention facilities in the same area.⁴⁹ In 1903 Cuba and the United States agreed that Cuba held ultimate sovereignty over the areas in land and water while the United States had complete jurisdiction over and within these areas.⁵⁰ In 1934 the parties signed the 1934 Treaty of Relations by which:

Until the two contracting parties agree to the modification or abrogation of the stipulations of the agreement in regard to the lease to the United States of America of lands in Cuba for coaling and naval station... the stipulations of that agreement with regard to the naval station of Guantanamo shall continue in effect. The supplementary agreement in regard to naval or coaling

42 Piero Gleijeses, "1898: The Opposition to the Spanish-American War," *Journal of Latin American Studies* 35:4 (2003): 681–719. For a detailed bibliography on the causes of the war see 681, fn. 1.

43 Philip S. Foner, "Why the United States Went to War with Spain in 1898," *Science and Society* 32:1 (1968): 39–65.

44 Merlin M. Magallona, "The Treaty of Paris of 10 December 1898: History and Morality in International Law," *Philippines Law Journal* 75 (2001): 159. See art. I, Treaty of Paris 1898. Complete text of the Treaty available at <https://uniset.ca/fa/tca/b-cs-ust000011-0615.pdf> accessed 25/June/2019.

45 Cosme de la Torriente, "The Platt Amendment," *Foreign Affairs* 8:3 (1930): 364–378.

46 Amy Kaplan, "Where is Guantánamo?" *American Quarterly* 57:3 (2005): 831–858.

47 For a view on why the sovereignty over Guantanamo is split between Cuba and the United States, see Steven Press, "Sovereignty at Guantánamo: New Evidence and a Comparative Historical Interpretation," *The Journal of Modern History* 85:3 (2013): 592–631.

48 Michael J. Strauss, "Guantanamo Bay and the Evolution of International Leases and Servitudes," *City University of New York Law Review* 10:2 (2007): 479–509.

49 See for example the Executive Order 13492 (22 January, 2009) "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of the Detention Facilities," in which the Obama Administration intends to close the detention facilities but maintain the status of the naval station. Complete text of the Executive Order 13492 available at <https://fas.org/irp/offdocs/eo/eo-13492.htm> accessed 24/June/2019.

50 Complete text of the Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval stations (23 March 1903) available at https://avalon.law.yale.edu/20th_century/dip_cuba002.asp, accessed 24/June/2019.

stations...also shall continue in effect in the same form and on the same conditions with respect to the naval station at Guantanamo. So long as the United States of America shall not abandon the said naval station of Guantanamo or the two Governments shall not agree to a modification of its present limits, the station shall continue to have the territorial area that it now has, with the limits that it has on the date of the signature of the present Treaty.⁵¹

With the revolution in Cuba and the break-up of the bilateral relations with the United States, the territorial dispute included a social element: waves of migration.⁵² Despite rhetorical speeches during the Obama administration,⁵³ the United States shows no sign of changing the current arrangements.⁵⁴ In terms of the regional context, Latin America as a sub-continent is assertively articulating its position as a bloc through different means such as the OAE (Organization of American States),⁵⁵ CELAC (Community of Latin American and Caribbean States)⁵⁶ and Parlantino (the Latin American Parliament).⁵⁷

Americans versus Americans

The Caribbean

There are several territorial disputes in the Caribbean. Most of them have their origin in colonial times. However, since many of the Caribbean states are islands and all of them have maritime borders, the 1982 United Nations Convention on the Law of the Sea resulted in other differences due to the legally redefined areas

51 Art. III, Treaty Between the United States of America and Cuba (29 May, 1934). Complete text of the Treaty available at https://avalon.law.yale.edu/20th_century/dip_cuba001.asp accessed 24/June/2019.

52 John Scanlan and Gilbert Loesch, "U.S. Foreign Policy, 1959–80: Impact on Refugee Flow from Cuba," *The Annals of the American Academy of Political and Social Science* 467:1 (1983): 116–137.

53 "Obama Administration Efforts to Close the Guantanamo Bay Detention Facility," in *White House Archives* available at https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Obama_Administration_Efforts_to_Close_Guantanamo.pdf, accessed 28/June/2018.

54 "Cuba: U. S. Policy in the 115th Congress," *Congressional Research Service*, 2018, available at <https://www.hsdl.org/?view&did=818557> accessed 28/June/2019.

55 "Towards the Closure of Guantanamo," in *Inter-American Commission on Human Rights, Organization of American States*, 2015, available at <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>, accessed 28/June/2019.

56 "Declaración Especial 3: Devolución a la República de Cuba del Territorio que ocupa la Base Naval de los Estados Unidos de América en Guantánamo," *CELAC*, 2016, available at http://www.itamaraty.gov.br/images/ed_integracao/3Declaracin_Especial_3_Devolucion_a_Cuba_de_territorio_en_Guantnmo.pdf, accessed 28/June/2019.

57 "Declaración Guantánamo," Parlantino, 2009, available at <http://parlatino.org/pdf/organos-principales/otras-instancias/ mesa-directiva/declaraciones/declaracion-guantanamo.pdf>, accessed 28/June/2019.

such as exclusive economic zones. Moreover, new technologies and the presence of natural resources in these areas have fostered disagreements. Guatemala and Belize,⁵⁸ Guyana and Suriname,⁵⁹ Venezuela and Guyana,⁶⁰ Nicaragua and Costa Rica, El Salvador and Honduras⁶¹ and others demonstrate these points.⁶²

As an example of all these issues and their local and regional dimensions, the paragraph below focuses on a settled territorial dispute in law that still provides grounds for ongoing controversy. Similar to the previous cases, the territorial dispute with regard to the archipelago of San Andres, Providencia and Santa Catalina is rooted in colonialism. The archipelago was discovered by Europeans in the sixteenth century,⁶³ colonized by Spain, and later occupied by English Puritans from Bermuda. Slaves arrived in 1633 from other Caribbean islands. After changing hands between Spain and England on a number of times, the islands joined the then independent Gran Colombia in 1822.⁶⁴

In 1923 the Colombian government started the "Colombianization" of the islands by supporting Catholics, removing the Baptist Church and prohibiting the use of English in schools.⁶⁵ Despite Nicaraguan claims of sovereignty over the archipelago, Colombia and Nicaragua signed in 1928 the Esguerra-Bárceñas Treaty by which the former gained control of the islands. The difference, settled in principle, generated conflict in 1980 when the Sandinista government in Nicaragua declared the aforementioned Treaty void. In 2001 Nicaragua presented its sovereignty claims

58 Alma H. Young and Dennis H. Young, "The Impact of the Anglo-Guatemalan Dispute on the Internal Politics of Belize," *Latin American Perspectives* 15:2 (1988): 6–30.

59 Thomas W. Donovan, "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis," *Journal of Transnational Law and Policy* 13:1 (2003): 41–98.

60 Thomas W. Donovan, "Challenges to the Territorial Integrity of Guyana: A Legal Analysis," *Georgia Journal of International and Comparative Law* 32 (2004): 661–724; Jacqueline Braveboy-Wagner, *The Venezuela-Guyana Border Dispute* (Boulder: Westview Press, 1984).

61 L. H. Martin and Y. B. Parkhomenko, "The Territorial and Maritime Dispute (Nicaragua v. Colombia) and Its Implications for Future Maritime Delimitations in the Caribbean Sea and Elsewhere," in *Nicaragua Before the International Court of Justice*, E. Sobenes Obregon and B. Samson, ed. (Gowerstrasse: Springer, 2018), 113–141; Martin Pratt, "The Maritime Boundary Dispute between Honduras and Nicaragua in the Caribbean Sea," *Boundary and Security Bulletin* 9:2 (2001): 106–116.

62 William Bianchi, *Belize: The Controversy between Guatemala and Great Britain over the Territory of British Honduras in Central America* (New York: Las Americas, 1959).

63 Arthur P. Newton, *The Colonising Activities of the English Puritans* (New York: Kennikat Press, 1966).

64 Donald Rowland, "Spanish Occupation of the Island of Old Providence, or Santa Catalina, 1641–1670," *The Hispanic American Historical Review* 15:3 (1935): 298–312; Peter J. Wilson, *Crab Antics: The Social Anthropology of English-Speaking Negro Societies of the Caribbean* (New Haven: Yale University Press, 1973).

65 Klaus de Albuquerque and William F. Stinner, "The Colombianization of Black San Andrians," *Caribbean Studies* 17:3/4 (1977–1978): 171–181.

at the International Court of Justice,⁶⁶ but in 2007 the international body recognized Colombian sovereignty. However, in 2012 the International Court applied a novel and controversial interpretation—a mixture of weighted base points, geodetic lines, parallels of latitude and enclaving—to confirm Colombian sovereignty and grant Nicaragua control over part of the western coastline of the archipelago.⁶⁷

This settled territorial dispute has several issues in the domestic, regional and international contexts. First, although the International Court of Justice determined the sovereign boundaries exclusive to Nicaragua and Colombia, arguments between both states are common.⁶⁸ Second, although in principle the dispute is between Nicaragua and Colombia, there are negative impacts to peace, security, natural resources exploration and exploitation at the regional level.⁶⁹ Third, as a result of migration, slavery and the different cultural influences at play, the Raizal community has struggled between Anglophone/Protestant and Hispanic/Catholic views.⁷⁰ To the bi-lateral and regional dimensions, the archipelago presents a tension between a local ethnic and racial minority and the Colombian state's interests.⁷¹

As with the previously reviewed disputes, strife over the archipelago has its roots in colonial times. As with the Mexico-United States border, although it is an issue settled in law, in practice it is a stage for ongoing controversy. Furthermore, in comparison to the Falklands/Malvinas case, along with two sovereign states claiming exclusive rights over the territory, there is a third population, the inhabitants of the land, whose wishes and interests seem to be overridden, or at least overlooked, by the competing claimants.

66 Christian Diemer and Amalija Šeparović, "Territorial Questions and Maritime Delimitation with Regard to Nicaragua's Claims to the San Andrés Archipelago," *Heidelberg Journal of International Law* 66 (2006): 167–185.

67 Lorenzo Palestini, "The Territorial and Maritime Dispute (Nicaragua v. Colombia): On Territorial Sovereignty and the International Court of Justice's Failure to Rule on the Geographical Scope of the Archipelago of San Andrés," *The Law and Practice of International Courts and Tribunals Journal* 15:1 (2016): 56–80; Nienke Grossman, "Territorial and Maritime Dispute," *American Journal of International Law* 107:2 (2013): 396–403. For an overview of the case and relevant judgments see *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, International Court of Justice, available at <https://www.icj-cij.org/en/case/124>, accessed 20/June/2019.

68 Mariano V. Ospina, "Nicaragua v. Colombia: A Stalemate in the Caribbean," *Global Security Studies* 4:4 (2013): 31–40.

69 Maria Otero, "Problems in the Caribbean: The Absence of Finality to the Territorial Dispute in Nicaragua V. Colombia will have Negative Impacts in the Region," *The University of Toledo Law Review* 46:3 (2015): 617–646.

70 James Ross, "Routes for Roots: Entering the 21st Century in San Andrés Island, Colombia," *Caribbean Studies* 35:1 (2007): 3–36.

71 Pablo Alonso González, Wilhelm Londoño and Eva Parga-Dans, "Equality and Hierarchy, Sovereignty and Multiculturalism: The Heritagisation of Raizals in Santa Catalina (Colombia)," *Journal of Ethnic and Migration Studies* (2018): 1–20.

Amazonia

The Amazon rain forest⁷² is located in South America and is part of the territories of Brazil, Peru, Colombia, Venezuela, Ecuador, Bolivia, Guyana, Suriname and French Guiana. The area is within domestic, regional and international contexts and several agents such as sovereign states, indigenous people, non-governmental organizations, multi-national private companies and scientists.⁷³

Most of the territorial disputes in the area are now resolved. They all had common roots in colonial times. The Spanish colonial government made no effort to establish clear boundaries, and consequently, after their independence, South America's newly-formed states found themselves with non-existent or vague and overlapping boundaries.⁷⁴ Every challenge in a territorial dispute in the area could introduce a plausible claim to some degree justified in history, law and politics.⁷⁵

Generally, Brazil argued for *uti possidetis de facto* instead of *uti possidetis de jure*, sovereignty based on physical occupation of the territory rather than a historical title. The aim was to expand its territory beyond the 1810 borders with Bolivia and Peru, formerly Spanish colonies.⁷⁶ In a similar way, borders with or between Colombia, Venezuela, Ecuador, Guyana and Suriname were long ago agreed. The Franco-Brazilian border was also agreed peacefully.⁷⁷ Yet, current issues include illegal cross-border immigration and disputes over resource extraction.⁷⁸

In particular, the now settled dispute between Ecuador and Peru⁷⁹ remained controversial until the Rio de Janeiro Protocol was agreed with the mediation of Argentina, Brazil, Chile and the United States.⁸⁰ Although the rivalry continued after the agreement, the guarantors were key in the final dispute resolution

72 Note the author uses the terms Amazonia or Amazon rainforest to refer to the geographical area in which many sovereign states in South America may have presence.

73 Paul E. Little, *Amazonia: Territorial Struggles on Perennial Frontiers* (Baltimore: Johns Hopkins University Press, 2001).

74 Ronald Bruce St John, "Boundary and Territory Briefing," *International Research Unit, Department of Geography, University of Durham* 1:4 (1994): 1–32.

75 For a detailed account see Isaiah Bowman, "The Ecuador-Peru Boundary Dispute," *Foreign Affairs* 20:4 (1942): 757–761.

76 Frederic William Ganzert, "The Boundary Controversy in the Upper Amazon between Brazil, Bolivia, and Peru, 1903–1909," *Hispanic American Historical Review* 14:4 (1934): 427–449, 430–ff.

77 Jonathan I. Charney and Lewis M. Alexander, eds., *International Maritime Boundaries, Volume I* (Boston: Martinus Nijhoff, 1996), 777–783.

78 Ligia T. L. Simonian and Rubens da Silva Ferreira, "Brazilian Migrant Workers in French Guiana," in *Caribbean Transnationalism: Migration, Pluralization, and Social Cohesion*, Ruben Gowricharn, ed. (Lanham: Lexington Books, 2006), Chapter 6.

79 David Scott Palmer, "Peru-Ecuador Border Conflict: Missed Opportunities, Misplaced Nationalism, and Multilateral Peacekeeping," *Journal of Interamerican Studies and World Affairs* 39:3 (1997): 109–148.

80 Complete text of the 1942 Rio de Janeiro Protocol available at <https://www.cia.gov/library/readingroom/docs/CIA-RDP08C01297R000700110015-9.pdf>, accessed 24/June/2019.

achieved in 1998 Brasilia Peace Agreement.⁸¹ Despite the long-standing difference, there is an indication that the involvement of external guarantors contributed towards the attainment of a peaceful and permanent understanding between the parties.⁸²

Although the borders are legally defined, South America provides a clear example of border reconfiguration because of social construction.⁸³ Indigenous communities that do not necessarily conform to legally defined borders claim ethno-territorial rights that are usually opposed to the interests of sovereign states and private companies.⁸⁴

At least three salient points have to do with Amazonia in relation to territorial disputes: it is evident that a territory rich in natural resources will attract domestic, regional and international agents; legal and political agreements in terms of borders, indigenous people, local communities and immigration should be included in any evaluation regarding territorial disputes; and the presence of external guarantors suggests an arguably more robust character to a peaceful agreement. In Brazil, the largest state in the area, politicians and academics seem to agree that the internationalization of the Amazon is not the answer.⁸⁵

Indigenous rights

The end of colonial times left in the Americas a still open dilemma, with many indigenous groups in territorial disputes with “civilized” states over what had been classed as “non-civilized” territories.⁸⁶ Colonial governments assumed in law and politics either that the indigenous people were not legally “persons,” or that, if

81 Complete text of the 1998 Brasilia Peace Agreement (in Spanish) available at https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/ep_brasilia10261998.pdf, accessed 24/June/2019.

82 Monica Herz and João Pontes Nogueira, *Ecuador vs. Peru: Peacemaking Amid Rivalry* (London: Lynne Rienner, 2002), 97–100.

83 Laetitia Perrier Bruslé, “Multi-Scalar Perspectives and Multi-Agent Process in a South American Borderland Region,” *Geopolitics* 18: 3 (2013): 584–611.

84 Markus Kröger and Rickard Lalander, “Ethno-Territorial Rights and the Resource Extraction Boom in Latin America: Do Constitutions Matter?” *Third World Quarterly* 37:4 (2016): 682–702.

85 See the speech by Cristovam Buarque, Professor at the University of Brasilia, former candidate for the Presidency of Brazil (2006), former District Governor and Senator, *Revista Diálogo Educacional* 3:5 (2002): 107–108 available (in Portuguese) at <https://periodicos.pucpr.br/index.php/dialogoeducacional/article/download/4753/4705>, accessed 29/June/2019. There are many resources in Portuguese opposed to the internationalization of Amazonia not translated into English. See, for example, Pio Filho Penna, “Interações Regionais e Pressões Internacionais sobre a Pan-Amazônia: Perspectivas Brasileiras,” in *Amazônia e Atlântico Sul: Desafios e Perspectivas para a Defesa no Brasil*, Gilberto F. Gheller, Selma L. M. Gonzales and Laerte P. Mello, eds. (Brasília: IPEA: NEP), 2015; Arthur C. F. Reis, “A Amazônia e a Integridade do Brasil,” in *Brasília: Senado Federal* (Brasília: Conselho Editorial, 2001); and many more.

86 M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (New York: Negro University Press, 1969), 11–12.

they existed legally, they were inferior. For the former assumption, if they were not “persons” the territories they inhabited were open to acquisition. For the latter understanding, the indigenous populations could have had title to the territories before the colonization but it ended when more developed societies arrived. Therefore, the legal and political justification in colonial times for discarding indigenous people and their claims to the territories they lived in had to do either with acquisition or extinguishment.⁸⁷

In current times the International Court of Justice still ignores the territorial occupation of indigenous populations as “effective” in cases of territorial disputes. Despite the nominal evolution in law and politics with the abandonment of the notion of “civilized” states, the current interpretation of notions of effective occupation is an embryo of such a view.⁸⁸ In fact, any current theoretical understanding in law and politics that has to do with the justification to claim a territory through *terra nullius*, the rule of effective occupation or the principle of *uti possidetis* neglects the fact indigenous populations exist and, consequently, rejects their connection with the territory.⁸⁹

Public international law includes some rules regarding indigenous people such as, indirectly, the Universal Declaration of Human Rights 1948;⁹⁰ globally, the United Nations Declaration on the Rights of Indigenous People 2007;⁹¹ and, regionally, directly referred to the Americas, The American Declaration of Indigenous Rights 2016.⁹²

Internationally, there seems to be a move towards supporting indigenous rights but in relation to human rights, health, education, etc. In addition to this, the United Nations Declaration is not legally binding.⁹³ At best, indigenous populations are treated fairly in terms of human rights and are somehow in control of their lives,⁹⁴ yet their territorial claims remain unanswered.

There is, however, what may be seen as a down-to-top advancement in terms of indigenous peoples and legal and political recognition of their rights, including territorial claims. More specifically, the legal and political developments start, at

87 Jérémie Gilbert, *Indigenous People's Land Rights under International Law: From Victims to Actors* (Ardsey, New York: Transnational, 2006), 1–2.

88 *Ibid.*, 35.

89 *Ibid.*, 40.

90 Complete text available at <https://www.un.org/en/universal-declaration-human-rights/index.html>, accessed 21/June/2019.

91 Overview and complete text available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>, accessed 21/June/2019.

92 Complete text available at <https://www.oas.org/en/sare/documents/DecAmIND.pdf>, accessed 21/June/2019.

93 Jeremie Gilbert, “Indigenous Rights in the Making: The United Nations Declaration on the Rights of Indigenous Peoples,” *International Journal on Minority and Group Rights* 14 (2007): 207–230.

94 S. James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004).

least in Latin America, at the domestic level and then expand nationally and internationally.

These same states, originally opposed to recognition of indigenous rights at the time of the colony and early independence, are leaving behind the European understanding and changing the way they interact with these populations.⁹⁵ Examples such as Nicaragua's infringement on indigenous rights in favor of development and promotion of new regional standards,⁹⁶ the evolving situation in Mexico towards the recognition of full citizenship and indigenous autonomy,⁹⁷ Ecuador and Bolivia with the growing influence of indigenous parties and indigenous individuals in positions of power⁹⁸ and Peruvian President Alejandro Toledo self-identified as indigenous,⁹⁹ demonstrate the tendency to acknowledge indigenous populations as "persons" in law with legal rights and obligations at the local level first, and from there, regionally. Most of the Latin American states include norms in their national constitutions recognizing the rights of indigenous peoples to land ownership.¹⁰⁰

Whether there are new normative grounds for territorial claims based on indigenous rights is still debatable.¹⁰¹ Nevertheless, two main points require further analysis. First, while the legal and political status of indigenous populations is in question in terms of territorial disputes,¹⁰² the Americas also include populations that were at one time settlers and nowadays claim self-determination,¹⁰³ such as the Falkland/Malvinas islanders. "Right-peopling"¹⁰⁴ the territory with settlers

95 Austen L. Parrish, "Changing Territoriality, Fading Sovereignty, and the Development of Indigenous Rights," *American Indian Law Review* 31 (2006): 291–314.

96 Willem Van Genugten and Camillo Perez-Bustillo, "The Emerging International Architecture of Indigenous Rights: The Interaction between Global, Regional, and National Dimensions," *International Journal on Minority and Group Rights* 11 (2004): 379–409.

97 Gemma van der Haar, "The Zapatista Uprising and the Struggle for Indigenous Autonomy," *European Review of Latin American and Caribbean Studies* 76 (2004): 98–108.

98 Donna Lee Van Cott, "Broadening Democracy: Latin America's Indigenous People's Movements," *Current History* 103 (2004): 80–85.

99 Shane Greene, "Getting Over the Andes: The Geo-Eco-Politics of Indigenous Movements in Peru's Twenty-First Century Inca Empire," *Journal of Latin American Studies* 38:2 (2006): 327–354.

100 J  r  mie Gilbert, *Indigenous People's Land Rights under International Law: From Victims to Actors* (Ardsey, New York: Transnational 2006), 299.

101 See, for example, Avery Kolers, *Law, Conflict and Justice: Theory of Territory* (New York: Cambridge University Press, 2009). Kolers introduces a way to assess indigenous peoples' territorial claims that allows the coexistence of different claims in the same state.

102 Rachel Sieder, "Indigenous People's Rights and the Law in Latin America," in *Handbook of Indigenous Peoples' Rights*, Corinne Lennox and Damien Short, eds. (London and New York: Routledge, 2016), 414–423.

103 For the author's view about self-determination see chapter 3.

104 Brendan O'Leary, "The Elements of Right-sizing and Right-Peopling the State," in *Right-sizing the State: The Politics of Moving Borders*, Brendan O'Leary, Ian S. Lustick and Thomas Callaghy, eds. (Oxford: Oxford University Press, 2001), 15–73.

was a way in which some former colonial powers (and some modern states like Israel) secured their claim to sovereignty over new territories. Whether these populations have the right to self-determination is a matter of further and detailed research. What remains puzzling at this point is that in the context of international law and politics settlers are considered “persons” and may be able to claim the territory they inhabit, while the legal and political status of indigenous populations is still unsettled.

Second, what is evident in the Americas is that currently indigenous people have legally recognized rights and their moral and historical entitlement to the territory is being reviewed.¹⁰⁵ Furthermore, the development in the legal regimen of restitution, the indigenous right to participate in the decision-making process related to the lands they inhabit and their rights to natural resources in these territories¹⁰⁶ suggest a move towards acknowledgment of their legal status. There is a clear indication the right to self-determination and consequent self-government could be the next steps in this legal evolution towards the recognition of indigenous rights in relation to territorial disputes.¹⁰⁷

Territorial claims over Antarctica

The Antarctic Treaty¹⁰⁸ mostly refers to scientific exploration of Antarctica and, therefore, in terms of sovereignty the legal situation is a *status quo ante*.¹⁰⁹ Most of the claims are from before the signing of the Antarctic Treaty and are based

105 Allen Gerlach, *Indians, Oil, and Politics: A Recent History of Ecuador* (Wilmington: Scholarly Resources, 2003).

106 For the legal regime on restitution see Chapter 4. For indigenous rights to participate in the decision-making process in relation to the land they inhabit and their rights over natural resources see Chapter 5 in Jérémie Gilbert, *Indigenous People's Land Rights under International Law: From Victors to Actors* (Ardsley, New York: Transnational 2006).

107 See, for example, the United States and the case of Hawaii in Keri E. Iyall Smith, *The State and Indigenous Movements* (New York: Routledge, 2006).

108 For a complete version of the Antarctic Treaty see http://www.ats.aq/documents/ats/treaty_original.pdf, accessed 26/June/2019.

109 Article IV of the Antarctic Treaty refers to territorial claims: “1. Nothing contained in the present Treaty shall be interpreted as: (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica; (b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise; (c) prejudicing the position of any Contracting Party as regards its recognition or non recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica. 2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty shall be asserted while the present Treaty is in force.” See J. Peter A. Bernhardt, “Sovereignty in Antarctica,” *California Western International Journal* 5 (1975): 297–349.

mainly on traditional means to acquire territory according to international law.¹¹⁰ Whether it is futile to refer to the question about sovereign rights in Antarctica in light of the Antarctic Treaty¹¹¹ it is still a fact there are seven states with territorial claims—Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom—with others such as the Russian Federation and the United States with research facilities in the area and many more interested agents like Brazil, China, India, and other Indian Ocean states.¹¹²

Antarctica, as a territorial dispute, encompasses several unique issues: legally, sovereignty is frozen; there is no indigenous or permanent population living in the area; it is a demilitarized zone; there are several original claimants and even more interested post-Treaty parties; the territory includes land, water and the exclusive economic zone¹¹³ and natural resources. Such a complex situation in law and fact requires a multidisciplinary vision¹¹⁴ if the different governments representing each claiming and interested agent actually give priority to the common global interest of humankind as a whole. From the aforementioned territorial disputes reviewed in this chapter, and the many dispute settlement procedures and remedies previously considered,¹¹⁵ it is possible to draw some basic guidelines for a permanent and peaceful understanding in Antarctica:

- 1 States are equal according to public international law.
- 2 Sovereignty can be shared.
- 3 Claiming exclusive sovereignty over a territory where there can be no claim is as legally and logically absurd as it is morally questionable.¹¹⁶

110 J. Peter A. Bernhardt, "Sovereignty in Antarctica," *California Western International Law Journal* 5 (1975): 297–349; D. W. Greig, "Territorial Sovereignty and the Status of Antarctica," *Australian Outlook* 32:2 (1978): 117–129.

111 Benedetto Conforti, "Territorial Claims in Antarctica: A Modern Way to Deal with an Old Problem," *Cornell International Law Journal* 19:2 (1986): 249–258.

112 For a comprehensive study see Anne-Marie Brady, ed., *The Emerging Politics of Antarctica* (Oxford and New York: Routledge, 2013). See also Klauss Dodds, Alan D. Hemmings and Peder Roberts, eds., *Handbook on the Politics of Antarctica* (Cheltenham, UK and Massachusetts, USA: Edward Elgar Publishing, 2017); Wei-chin Lee, "China and Antarctica: So Far and Yet So Near," *Asian Survey* 30:6 (1990): 576–586; Anne-Marie Brady, "China's Rise in Antarctica," *Asian Survey* 50:4 (2010): 759–785; Jonathan Harrington, "China in Antarctica: A History," *Southeast Review of Asian Studies* 37 (2015): 1–19; Anne-Marie Brady, *China as a Polar Great Power* (Cambridge: Cambridge University Press, 2017); Christopher C. Joyner, "Antarctica and the Indian Ocean States: The Interplay of Law, Interests, and Geopolitics," *Ocean Development and International Law* 21:1 (1990): 41–70; and many others.

113 Christopher C. Joyner, "The Exclusive Economic Zone and Antarctica: The Dilemmas of Non-Sovereign Jurisdiction," *Ocean Development and International Law* 19:6 (1988): 469–491.

114 Luis Valentín Ferrada, "Five Factors that will Decide the Future of Antarctica," *The Polar Journal* 8:1 (2018): 84–109.

115 See chapter 5.

116 Ingo Heidbrink, "Claiming Sovereignty Where There can be no Sovereignty: Antarctica," *Environment, Space, Place* 8:2 (2016): 99–121.

- 4 To secure a peaceful and definitive arrangement, the final agreement must somehow benefit all interested parties, must recognize (in whole or in part) their claims, and the result must not be detrimental to any of the agents. Consequently, sovereignty of the disputed territories should not be totally in the hands of only one or a few of the claiming parties.
- 5 If existing conditions in terms of sovereignty continue, they will only perpetuate a *status quo* and therefore, a legal and political limbo securing only one result: a volatile area that can only benefit those agents with the means to explore and exploit the area.
- 6 Any arrangements in relation to Antarctica should avoid any form of domination¹¹⁷ and, therefore, guarantee to all interested parties equal footing in the decision-making process related to any Antarctic issue.
- 7 To neutralize self-centred interests that could only benefit one or more of the agents instead of all, the arrangements should be independent from the United Nations system legally and politically.¹¹⁸

In terms of the Americas and Antarctica, with Argentina and Chile as original claiming parties and Brazil, Uruguay, Peru and Ecuador as full members of the Antarctic Treaty,¹¹⁹ Latin America as a region has the opportunity to leave behind states' individual and self-centred agendas, generate consensus and act as a bloc internationally against classical colonial powers such as the United Kingdom and France and neo-imperialist ambitions from states like the United States and China. The facts they have in common normatively and factually, such as colonial past, sociological composition, language, culture, geographical proximity in relation to the claimed territory, internal financial and political situations, level of development, and generally democratic regimes, give the Latin American states a potentially robust standing in relation to any other claiming or interested party should they decided to act with regard Antarctica in cooperation and with a common goal.

Conclusion

This chapter presented a sample of some of the territorial disputes in the Americas. First, it introduced the common roots in all cases: the historical component based on colonial times and the lack of clear border demarcation at the time or, in the cases in which the demarcation had taken place in law, the difficulty in applying the decision to the areas in question. Thereafter, three main thematic areas and some controversial examples in each area were reviewed: cases that included a participant in the dispute outside the American continent; neo-colonial interference by the United States in other states; and ongoing territorial disputes between states in the region.

117 For the author's view on domination see chapter 3.

118 See chapter 5.

119 Adrian Howkins, "Latin America and Antarctica," in *Oxford Research Encyclopedia of Latin American History* (Oxford: Oxford University Press, 2017).

The brief sketch provided some indications of the origin of these disputes. Together with the historical background and the lack of clearly defined boundaries in colonial times, current international law such as the Law of the Sea, new technologies for exploration and exploitation of natural resources, the existence or absence of indigenous or implanted populations in the territories under question, and several other elements result in multi-faceted and multi-layered territorial disputes.

Some partial conclusions indicate that any population in a disputed territory, whether implanted for “right-peopling” reasons or indigenous, may present a different interest to the ones represented by the claimant sovereign states. Moreover, these differences have domestic, regional and international contexts that influence each other. For example, the existence of guarantors in a settlement arrangement may help maintain a permanent and peaceful understanding between conflicting parties.

Finally, in particular in cases such as the Falkland/Malvinas Islands, Mexico-United States border, the Amazon region and Antarctica, it is at least plausible to argue a regional approach in the form of a bloc, sub-continental or continental alliance could strengthen the position of continental actors against external interests in the region by bettering the bargaining power of what could otherwise be individually weak international actors.

Bibliography

- Albuquerque, Klausde and Stinner, William F. “The Colombianization of Black San Andreans.” *Caribbean Studies* 17:3/4 (1977–1978): 171–181.
- Anaya, S. James. *Indigenous Peoples in International Law*. Oxford: Oxford University Press, 2004.
- Aulich, James. *Framing the Falklands War: Nationhood, Culture, and Identity*. Milton Keynes: Open University Press, 1992.
- Beck, Peter. “Cooperative Confrontation in the Falkland Island Dispute.” *Journal of Inter-American Studies and World Affairs* 24 (1982): 37–57.
- Beck, Peter. “Britain’s Falkland Future-the Need to Look Back.” *The Round Table* 73 (1984): 139–152.
- Beck, Peter. “The Future of the Falkland Islands: A Solution Made in Hong Kong?” *International Affairs, Royal Institute of International Affairs* 61 (1985): 643–660.
- Beck, Peter. “Looking at the Falkland Islands from Antarctica: The Broader Regional Perspective.” *Polar Record* 30 (1994): 167–180.
- Beck, Peter. *The Falkland Islands as an International Problem*. London and New York: Routledge, 1998.
- Bender, Lynn. *Cuba vs. United States*. San Juan: Inter American University Press, 1981.
- Bernhardt, J. Peter A. “Sovereignty in Antarctica.” *California Western International Journal* 5 (1975): 297–349.
- Bianchi, William. *Belize: The Controversy between Guatemala and Great Britain over the Territory of British Honduras in Central America*. New York: Las Americas, 1959.
- Bowman, Isaiah. “The Ecuador-Peru Boundary Dispute.” *Foreign Affairs* 20:4 (1942): 757–761.
- Brady, Anne-Marie, ed. *The Emerging Politics of Antarctica*. Oxford and New York: Routledge, 2013.
- Brady, Anne-Marie. “China’s Rise in Antarctica?” *Asian Survey* 50:4 (2010): 759–785.

- Brady, Anne-Marie. *China as a Polar Great Power*. Cambridge: Cambridge University Press, 2017.
- Braveboy-Wagner, Jacqueline. *The Venezuela-Guyana Border Dispute*. Boulder: Westview Press, 1984.
- Brownlie, Ian. *Principles of Public International Law*. Oxford: Oxford University Press, 2003.
- Calvert, Peter. *Boundary Disputes in Latin America*. London: Institute for the Study of Conflict, 1983.
- Charney, Jonathan I. and Alexander, Lewis M., eds. *International Maritime Boundaries*, Volume I. Boston: Martinus Nijhoff, 1996.
- Child, Jack. *Geopolitics and Conflict in South America*. New York: Praeger, 1985.
- Closs, Michael P., ed. *Native American Mathematics*. Austin: University of Texas, 1997.
- Conforti, Benedetto. "Territorial Claims in Antarctica: A Modern Way to Deal with an Old Problem." *Cornell International Law Journal* 19:2 (1986): 249–258.
- Conrad, Geoffrey W. and Demarset, Arthur A. *Religion and Empire: The Dynamics of Aztec and Inca Expansionism*. Cambridge: Cambridge University Press, 1984.
- Consani, Norberto, Federico Martin Gomez and Sánchez, Leandro Enrique. *Malvinas y la Construcción de un Reclamo Soberano: Pasado, Presente y Futuro*. La Plata: Universidad Nacional de La Plata, 2017.
- Cook, Noble David. *Born to Die: Disease and the New World Conquest, 1492–1650*. Cambridge: Cambridge University Press, 1998.
- Day, Alan J., ed. *Border and Territorial Disputes*. Essex: Longman, 1982.
- Denevan, William M. *The Native Population of the Americas in 1492*. Ann Arbor: University of Wisconsin Press, 1992.
- Diemer, Christian and Šeparović, Amalija. "Territorial Questions and Maritime Delimitation with Regard to Nicaragua's Claims to the San Andrés Archipelago." *Heidelberg Journal of International Law* 66 (2006): 167–185.
- Dobyns, Henry F. "An Appraisal of Techniques with a New Hemispheric Estimate." *Current Anthropology* 7:4 (1966): 395–416.
- Dodds, Klauss, Alan D. Hemmings and Roberts, Peder, eds. *Handbook on the Politics of Antarctica*. Cheltenham, UK and Massachusetts, USA: Edward Elgar, 2017.
- Donovan, Thomas W. "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis." *Journal of Transnational Law and Policy* 13:1 (2003): 41–98.
- Donovan, Thomas W. "Challenges to the Territorial Integrity of Guyana: A Legal Analysis." *Georgia Journal of International and Comparative Law* 32 (2004): 661–724.
- Donovan, Thomas W. "The Marouini River Tract and Its Colonial Legacy in South America." *Chicago-Kent Journal of International and Comparative Law* 4 (2004): 1–28.
- Downing, David. *An Atlas of Territorial and Border Disputes*. London: New English Library, 1980.
- Drago, Luis M. and Nettles, H. Edward. "The Drago Doctrine in International Law and Politics." *The Hispanic American Historical Review* 8 (1928): 204–223.
- Ferrada, Luis Valentín. "Five Factors that will Decide the Future of Antarctica." *The Polar Journal* 8:1 (2018): 84–109.
- Foner, Philip S. "Why the United States Went to War with Spain in 1898." *Science and Society* 32:1 (1968): 39–65.
- Ganzert, Frederic William. "The Boundary Controversy in the Upper Amazon between Brazil, Bolivia, and Peru, 1903–1909." *Hispanic American Historical Review* 14:4 (1934): 427–449.

- Gerlach, Allen. *Indians, Oil, and Politics: A Recent History of Ecuador*. Wilmington: Scholarly Resources, 2003.
- Gilbert, Jeremie. "Indigenous Rights in the Making: The United Nations Declaration on the Rights of Indigenous Peoples." *International Journal on Minority and Group Rights* 14 (2007): 207–230.
- Gilbert, Jérémie. *Indigenous People's Land Rights under International Law: From Victims to Actors*. Ardsley, New York: Transnational, 2006.
- Gilderhus, Mark T. "The Monroe Doctrine: Meanings and Implications." *Presidential Studies Quarterly* 36 (2006): 5–16.
- Gleijeses, Piero. "1898: The Opposition to the Spanish-American War." *Journal of Latin American Studies* 35:4 (2003): 681–719.
- González, Pablo Alonso, Wilhelm Londoño and Parga-Dans, Eva. "Equality and Hierarchy, Sovereignty and Multiculturalism: The Heritagisation of Raizals in Santa Catalina (Colombia)." *Journal of Ethnic and Migration Studies* (2018): 1–20.
- Grandpierron, Matthieu. "Preserving 'Great Power Status': The Complex Case of the British Intervention in the Falklands (1982)." *Croatian International Relations Review* 23:79 (2017): 127–156.
- Greene, Shane. "Getting Over the Andes: The Geo-Eco-Politics of Indigenous Movements in Peru's Twenty-First Century Inca Empire." *Journal of Latin American Studies* 38:2 (2006): 327–354.
- Greig, D. W. "Territorial Sovereignty and the Status of Antarctica." *Australian Outlook* 32:2 (1978): 117–129.
- Grossman, Nienke. "Territorial and Maritime Dispute." *American Journal of International Law* 107:2 (2013): 396–403.
- Gruben, William C. and Payan, Tony. "Illegal Immigration on the U.S.-Mexico Border: Is it Really a Crisis?" Houston, Texas: Rice University, The James A. Baker III Institute for Public Policy, 2014.
- Gutierrez Bróndolo, Ignacio. "Malvinas en la Nueva Perspectiva Latinoamericana." *Universidad Nacional de Rosario*, 2017.
- Haklai, Oded and Loizides, Nephytos. "Settlers and Conflict Over Contested Territories." In *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts*, Oded Haklai and Nephytos Loizides, eds., 1–16. Stanford, California: Stanford University Press, 2015.
- Harrington, Jonathan. "China in Antarctica: A History." *Southeast Review of Asian Studies* 37 (2015): 1–19.
- Heidbrink, Ingo. "Claiming Sovereignty Where There can be no Sovereignty: Antarctica." *Environment, Space, Place* 8:2 (2016): 99–121.
- Hensel, Paul R. "One Thing Leads to Another: Recurrent Militarized Disputes in Latin America, 1816–1986." *Journal of Peace Research* 31:3 (1994): 281–297.
- Hensel, Paul R. "Contentious Issues and World Politics: The Management of Territorial Claims in the Americas, 1816–1992." *International Studies Quarterly* 45:1 (2001): 81–109.
- Hershey, Amos S. "The Calvo and Drago Doctrines." *The American Journal of International Law* 1 (1907): 26–45.
- Herz, Monica and Pontes Nogueira, João. *Ecuador vs. Peru: Peacemaking Amid Rivalry*. London: Lynne Rienner, 2002.
- Howkins, Adrian. "Latin America and Antarctica." In *Oxford Research Encyclopedia of Latin American History*. Oxford: Oxford University Press, 2017.
- Huth, Paul K. *Standing Your Ground. Territorial Disputes and International Conflict*. Ann Arbor: University of Michigan Press, 2001.

- Ireland, Gordon. *Boundaries, Possessions, and Conflicts in South America*. Cambridge: Harvard University Press, 1938.
- Joyner, Christopher C. "Antarctica and the Indian Ocean States: The Interplay of Law, Interests, and Geopolitics." *Ocean Development and International Law* 21:1 (1990): 41–70.
- Joyner, Christopher C. "The Exclusive Economic Zone and Antarctica: The Dilemmas of Non-Sovereign Jurisdiction." *Ocean Development and International Law* 19:6 (1988): 469–491.
- Kaplan, Amy. "Where is Guantánamo?" *American Quarterly* 57:3 (2005): 831–858.
- Kennedy, Crammond. "The Drago Doctrine." *The North American Review* 185 (1907): 614–622.
- Kessel, A. H. "Canadian Arctic Sovereignty: Myths and Realities." In *Governing the North American Arctic*, D. A. Berry, N. Bowles and H. Jones, eds., 242–246. London: Palgrave Macmillan, 2016.
- Kolers, Avery. *Law, Conflict and Justice: Theory of Territory*. New York: Cambridge University Press, 2009.
- Krepp, Stella. "A View from the South: the Falklands/Malvinas and Latin America." *Journal of Transatlantic Studies* 15:4 (2017): 1–18.
- Kröger, Markus and Lalander, Rickard. "Ethno-Territorial Rights and the Resource Extraction Boom in Latin America: Do Constitutions Matter?" *Third World Quarterly* 37:4 (2016): 682–702.
- Lamont, Michèle, Bo Yun Park, Bo Yun and Ayala-Hurtado, Elena. "Trump's Electoral Speeches and His Appeal to the American White Working Class." *British Journal of Sociology* 68:1 (2017): 153–180.
- Lee, Wei-chin. "China and Antarctica: So Far and Yet So Near." *Asian Survey* 30:6 (1990): 576–586.
- Leung, Ray ChungHang. "The Discursive Positioning of the Falkland Islands (Las Islas Malvinas): A Corpus-Based Collocational Analysis of British and Argentinian Websites." *Global: A Journal of Language, Culture and Communication* 5 (2017): 1–31.
- Levy, Jack S. and Vakili, Lily I. "Diversion Action by Authoritarian Regimes: Argentina and the Falklands/Malvinas Case." In *The Internationalization of Communal Strife*, Manus I. Midlarsky, ed., 118–146. London: Routledge, 1992.
- Linden, H. Vander. "Alexander VI and the Demarcation of the Maritime and Colonial Domains of Spain and Portugal, 1493–1494." *The American Historical Review* 22:1 (1916): 1–20.
- Lindley, M. F. *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion*. New York: Negro University Press, 1969.
- Lisińska, Magdalena. "Is the Archipelago a Political Tool? The Role of the Falkland Islands Sovereignty Dispute in Argentina Policy During the Kirchner Era." *Ad American Journal of American Studies* 17 (2016): 119–134.
- Little, Paul E. *Amazonia: Territorial Struggles on Perennial Frontiers*. Baltimore: Johns Hopkins University Press, 2001.
- Lobo, Susana, Steve Talbot and Morris, Traci L., eds. *Native American Voices: A Reader*. London and New York: Routledge, 2010.
- Magallona, Merlin M. "The Treaty of Paris of 10 December 1898: History and Morality in International Law." *Philippines Law Journal* 75 (2001): 159.
- Martin L. H. and Parkhomenko, Y. B. "The Territorial and Maritime Dispute (Nicaragua v. Colombia) and Its Implications for Future Maritime Delimitations in the Caribbean

- Sea and Elsewhere." In *Nicaragua Before the International Court of Justice*, E. Sobenes Obregon and B. Samson, eds., 113–141. Gewerbstrasse: Springer, 2018.
- Mazza, Jacqueline. "The US-Mexico Border and Mexican Migration to the United States: A 21st Century Review." *SAIS Review of International Affairs* 37:2 (2017): 33–47.
- Meyer, Maureen, Adam Isacson and Scorpio, Carolyn. "Not a National Security Crisis: The U.S.-Mexico Border and Humanitarian Concerns, Seen from El Paso." In *Advocacy for Human Rights in the Americas*, Washington: WOLA (Washington Office on Latin America), 2016.
- Monaghan, David. *The Falklands War*. London: Palgrave Macmillan, 1998.
- Monzón, Alberto and Briceño, Claudio. "Las Islas del Atlántico Sur y la Integración Latinoamericana." *Humania del Sur* 7:12 (2012): 51–72.
- Morán, Sabrina. "The Malvinas War in the Democratic Transition in Argentina. Conflicts and Tension within A Demalvinized Political Agenda." *Cuadernos de Marte* 9:15 (2018): 173–207.
- Muñoz, Helardo. "Efectos y Lecciones del Conflicto de las Malvinas." *Estudios Internacionales* 15:60 (1982): 499–512.
- Newson, Linda A. "The Demographic Collapse of Native Peoples of the Americas, 1492–1650." *Proceedings of the British Academy* 81 (1993): 247–288.
- Newton, Arthur P. *The Colonising Activities of the English Puritans*, New York: Kennikat, 1966.
- Norpoth, Helmut. "The Falklands War and Government Popularity in Britain: Rally without Consequence or Surge without Decline?" *Electoral Studies* 6:1 (1987): 3–16.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor and Francis Group, 2017.
- O'Leary, Brendan. "The Elements of Right-sizing and Right-Peopling the State." In *Right-sizing the State: The Politics of Moving Borders*, Brendan O'Leary, Ian S. Lustick and Thomas Callaghy, eds., 15–73. Oxford: Oxford University Press, 2001.
- Ospina, Mariano V. "'Nicaragua v. Colombia' A Stalemate in the Caribbean." *Global Security Studies* 4:4 (2013): 31–40.
- Otero, Maria. "Problems in the Caribbean: The Absence of Finality to the Territorial Dispute in Nicaragua V. Colombia will have Negative Impacts in the Region." *The University of Toledo Law Review* 46:3 (2015): 617–646.
- Palestini, Lorenzo. "The Territorial and Maritime Dispute (Nicaragua v. Colombia): On Territorial Sovereignty and the International Court of Justice's Failure to Rule on the Geographical Scope of the Archipelago of San Andrés." *The Law and Practice of International Courts and Tribunals Journal* 15:1 (2016): 56–80.
- Palmer, David Scott. "Peru-Ecuador Border Conflict: Missed Opportunities, Misplaced Nationalism, and Multilateral Peacekeeping." *Journal of Interamerican Studies and World Affairs* 39:3 (1997): 109–148.
- Parrish, Austen L. "Changing Territoriality, Fading Sovereignty, and the Development of Indigenous Rights." *American Indian Law Review* 31 (2006): 291–314.
- Penna, Pio Filho. "Interações Regionais e Pressões Internacionais sobre a Pan-Amazônia: Perspectivas Brasileiras." In *Amazônia e Atlântico Sul: Desafios e Perspectivas para a Defesa no Brasil*, Gilberto F. Gheller, L. M. Selma and Laerte P. Mello, eds., 17–18. Brasília: IPEA, 2015.
- Perrier Bruslé, Laetitia. "Multi-Scalar Perspectives and Multi-Agent Process in a South American Borderland Region." *Geopolitics* 18:3 (2013): 584–611.
- Polanco, Hector Diaz. *Indigenous Peoples in Latin America: The Quest for Self-Determination*. New York: Routledge: 2018.

- Pratt, Martin. "The Maritime Boundary Dispute between Honduras and Nicaragua in the Caribbean Sea." *Boundary and Security Bulletin* 9:2 (2001): 106–116.
- Press, Steven. "Sovereignty at Guantánamo: New Evidence and a Comparative Historical Interpretation." *The Journal of Modern History* 85:3 (2013): 592–631.
- Ratner, Steven R. "Drawing a Better Line: *Uti Possidetis* and the Borders of New States." *American Journal of International Law* 90:4 (1996): 590–624.
- Reis, Arthur C. F. *A Amazônia e a Integridade do Brasil*. Brasília: Senado Federal, Conselho Editorial (2001).
- Root, Elihu. "The Real Monroe Doctrine." *American Society of International Law* 8 (1914): 6–22.
- Ross, James. "Routes for Roots: Entering the 21st Century in San Andrés Island, Colombia." *Caribbean Studies* 35:1 (2007): 3–36.
- Rowland, Donald. "Spanish Occupation of the Island of Old Providence, or Santa Catalina, 1641–1670." *The Hispanic American Historical Review* 15:3 (1935): 298–312.
- Sanders, David, Hugh Ward, David Marsh and Fletcher, Tony. "Government Popularity and the Falklands War: A Reassessment." *British Journal of Political Science* 17:3 (1987): 281–313.
- Scanlan, John and Loescher, Gilbert. "U.S. Foreign Policy, 1959–80: Impact on Refugee Flow from Cuba." *The Annals of the American Academy of Political and Social Science* 467:1 (1983): 116–137.
- Shaw, Malcom N. *International Law*. Cambridge: Cambridge University Press. 2003.
- Sieder, Rachel. "Indigenous People's Rights and the Law in Latin America." In *Handbook of Indigenous Peoples' Rights*, Corinne Lennox and Damien Short, eds., 414–423. London and New York: Routledge, 2016.
- Simonian, Ligia T. L. and da Silva Ferreira, Rubens. "Brazilian Migrant Workers in French Guiana." In *Caribbean Transnationalism: Migration, Pluralization, and Social Cohesion*, Ruben Gowricharn, ed., 99–116. Lanham: Lexington Books, 2006.
- Smith, Keri E. Iyall. *The State and Indigenous Movements*. New York: Routledge, 2006.
- St John, Ronald Bruce. "Boundary and Territory Briefing." *International Research Unit, Department of Geography, University of Durham* 1:4 (1994): 1–32.
- Stevenson, Christopher. "Hans Off!: The Struggle for Hans Island and the Potential Ramifications for International Border Dispute Resolution." *Boston College International and Comparative Law Review* 30:1 (2007): 263–275.
- Strauss, Michael J. "Guantanamo Bay and the Evolution of International Leases and Servitudes." *City University of New York Law Review* 10:2 (2007): 479–509.
- Tandeciarz, Silvia R. *Citizens of Memory: Affect, Representation, and Human Rights in Postdictatorship Argentina*. Lewisburg: Bucknell University Press, 2017.
- Torriente, Cosme de la. "The Platt Amendment." In *Foreign Affairs* 8:3 (1930): 364–378.
- Van Cott, DonnaLee. "Broadening Democracy: Latin America's Indigenous People's Movements." *Current History* 103 (2004): 80–85.
- Van der Haar, Gemma. "The Zapatista Uprising and the Struggle for Indigenous Autonomy." *European Review of Latin American and Caribbean Studies* 76 (2004): 98–108.
- Van Genugten, Willem and Perez-Bustillo, Camillo. "The Emerging International Architecture of Indigenous Rights: The Interaction between Global, Regional, and National Dimensions." *International Journal on Minority and Group Rights* 11 (2004): 379–409.
- Wilson, Peter J. *Crab Antics: The Social Anthropology of English-Speaking Negro Societies of the Caribbean*. New Haven: Yale University Press, 1973.
- Young, Alma H. and Young, Dennis H. "The Impact of the Anglo-Guatemalan Dispute on the Internal Politics of Belize." *Latin American Perspectives* 15:2 (1988): 6–30.

7 Territorial disputes in Europe and Asia

Introduction

This chapter evaluates ongoing territorial disputes in Europe and Asia, which have different characteristics from the territorial disputes in the Americas. The disputes in Europe share a common thread: the sociological component. In Asia, the disputes clearly demonstrate the negative synergy created when the domestic, regional and international contexts merge.

The first section centers on cases that involve two ethnic or nationality groups living in the same or adjacent territory, neither of which wants to belong to a state dominated by the other (the cases of Crimea, Gibraltar, Cyprus and Northern Ireland illustrate this segment). The section introduces, compares, contrasts and appraises many domestic, regional and international issues at stake, such as geopolitical importance, territorial integrity and historical entitlement, and highlights the role of sociological components such as nationalism, minorities and national identity. Furthermore, the region provides several samples of situations that could potentially be resolved but in which a leader's prestige works against a final and peaceful settlement because the *status quo* or ongoing tension provides them higher pay-off with their constituency.

The second section focuses on geostrategic location locally, regionally and globally, focusing on the cases of Kashmir and the South China Sea. This section gives particular attention to an often-overlooked element in territorial disputes: the fact that non-regional parties and their interests play a major role in their origin, continuation and potential escalation into conflict. Similarly to the European cases, the Asian examples have leaders profiting from the ongoing nature of the territorial dispute and using them to gain domestic and international support.

The overall aim of this chapter is to explore in more depth elements other than territory that are directly involved with the initiation and continuation of territorial disputes. Historical roots are an important factor, as the cases in the Americas illustrate. Yet, even in situations in which it may seem that historical interference from external influence has not been an issue for a long time, deeply embedded intra-social tension between different groups contributes towards the perennial nature of some territorial differences. Moreover, these domestic frictions are

exploited by national leaders and international agents not necessarily part of the region who have their own agendas.

Multilayer sovereignty and the domestic, regional and global contexts

While the territorial conflicts in the Americas have roots in colonial times, there is a common theme in the conflicts in the European and Asian continents. The territorial disputes in Europe and Asia do have a historical component; however, there are two distinguishing elements worth noting and exploring. On the surface, these differences appear to be circumscribed to a local populated area with at least two sovereign states, usually neighbors, arguing about their respective rights over the same territory. A more accurate view shows that both in Europe and Asia the regional and international contexts fuel intra-society differences resulting in ongoing territorial disputes and, at times, escalation into conflict.

Sovereignty is a central concept to many sciences. When related to the political entity “state” it refers to a government’s exclusive right to create and apply law for a population within a territory. Among the elements that shape a sovereign state, like population, territory, government and law, sovereignty is often characterized by reference to only one of them: territorial sovereignty.¹ However, since a sovereign state can be characterized and defined by reference to any other of its elements as well as territory, a view on territorial disputes would be incomplete without an analysis of its sociological component.²

In the domestic context, the territorial disputes in Europe presented below all involve divided societies—two ethnic or nationality groups living in the same or adjacent territory, neither of which wants to belong to a state dominated by the other.³ Arguably, “cultural shared sovereignty”⁴ offers all the claimants a certain degree of participation, but in fact can result in mutual exclusion. Human rights with regard to minorities are at the core of these kinds of arrangements. However, territorial disputes are not only a question of human rights. The final question about sovereignty over a disputed territory, even in cases such as Gibraltar that on the surface seem to be closer to a definitive and peaceful solution, remains unanswered; and, in fact, some territorial disputes may leave aside completely questions about human rights, as when the competing parties are dictatorships. When

1 See chapters 2 and 3 for the author’s views about state and sovereignty, respectively.

2 John R. Commons, “A Sociological View of Sovereignty,” *American Journal of Sociology* 5:5 (1900): 683–695. For the author’s view about different conceptions of “sovereignty” see Jorge E. Núñez, “About the Impossibility of Absolute State Sovereignty: The Early Years,” *International Journal for the Semiotics of Law* 27 (2014): 645–664.

3 Anthony Oberschall, “Preventing Genocide,” *Contemporary Sociology* 29 (2000): 1–13.

4 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 3.

societies are divided, national and regional leaders play a major role in the initiation and continuation of territorial disputes.

In ideal terms,⁵ each claimant in a territorial dispute is a community of people who live in a certain territory and have common authorities and laws.⁶ The individuals in these claiming parties have both common and conflicting interests.⁷ But, although each claiming party is formed by many different individuals with different interests, each of these claiming parties supposedly has as a group a “state plan of life”⁸ that includes a common interest in terms of the territorial dispute: sovereignty over the disputed territory. This ideal way of understanding the claimants in any territorial dispute may be of questionable value in real life, as any state or populated territory includes a variety of individual and collective identities with their own understandings of what may be just.⁹ So, even if it may be useful to use Rawlsian methodology to analyze what reasonable representatives would do in territorial disputes,¹⁰ to encapsulate the study only on ideal representatives of states oversimplifies issues such as identity and justice.

To assume that all leaders, political parties and representatives conform to the ideal understanding and aim for the best for their nationals is not realistic, and even naïve. Indeed, along with different individual and collective identities, domestic political prestige is an important motivator to start and maintain territorial disputes.¹¹ Often, the driving forces behind these differences have to do with emotional and symbolic factors. Rulers seek internally for prestige and power or, at least, the appearance that they are powerful against real or imaginary external enemies. Using territorial disputes can have two results: the leader’s prestige feeds directly his/her personal and political internal influence; and second, it

5 The author refers here to the distinction between ideal and non-ideal theory. See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 1.

6 For a notion of society see John Rawls, *A Theory of Justice, Revised Edition* (Oxford: Oxford University Press, 1999), 4.

7 *Ibid.*

8 The author refers to a “state plan of life.” For further details see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor and Francis Group, 2017, chapter 6.

9 Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), 141–143.

10 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapters 1 and 6.

11 See chapter 4. See also Paul K. Huth, *Standing Your Ground. Territorial Disputes and International Conflict*, Ann Arbor: The University of Michigan Press, 2001; Youngho Kim, “Does Prestige Matter in International Politics?” *Journal of International and Area Studies* 11:1 (2004): 39–55; Brandon J. Kinne, “Dependent Diplomacy: Signaling, Strategy, and Prestige in the Diplomatic Network,” *International Studies Quarterly* 58:2 (2014): 247–259; Daniel Markey, “Prestige and the Origins of War: Returning to Realism,” *Security Studies* 8:4 (1999): 126–172; and Barry O’Neill, *Honor, Symbols and War* (Ann Arbor: The University of Michigan Press), 1999.

enables the government and the leader to distract internal attention from problems such as inflation, corruption, lack of security, and unemployment while justifying ordinary and extraordinary measures such as austerity programs, political intervention, oppression of domestic minorities, and censorship.

On the regional level, two points are worth noting. First, the competing interests of neighbor states and populations include issues related to the territory itself (natural resources, borders, defense); population (minorities' rights, migration, asylum seekers, nationalism); and government (the leader's internal prestige being related to the state's regional relevance in terms of, for example, security). Second, supranational and intergovernmental organizations such as the European Union (EU), the Association of south East Asian Nations (ASEAN) and the North Atlantic Treaty Organization (NATO)¹² include references in law to the equality between member states in the participation of the institutions and their decision-making processes. Nevertheless, legally recognized equality does not translate into factual equality, so the EU, ASEAN and NATO include states with different amounts of bargaining power.

In the international context, there are several strong states such as the United States, the United Kingdom, the Russian Federation, China and Japan that have a constant financial, military, cultural and political presence in disputes that have little to do with their own legally defined domestic jurisdictions. However, the presence of such strong states is, for different issues at stake that are reviewed below, important for their respective international agendas. Therefore, not to include the international context in the study of territorial disputes is to have a narrow and incomplete view.

Territorial disputes in Europe and Asia show a permanent sociological feature: pluralism. As in civil society, the international community includes agents of very different natures (sovereign states, cultures, subcultures, religions and individuals) with their own individual and collective interests. People in civil societies may be weak or strong, wealthy or poor, classed as abled or disabled, and so on; while the international arena includes developed and non-developed nations, democratic and non-democratic legal systems, populated and unpopulated territories, sovereign states, pseudo-states, quasi-states, and other bodies.

In the case of civil societies, many national legal orders already offer rules and mechanisms to secure effective impartiality in the way that persons are considered and a certain degree of fairness (or, at least, the ability to challenge unfair situations). The global order is very different. Although there are international rules and mechanisms that in principle acknowledge the equality of states and give

12 The EU has both supranational and intergovernmental institutions and creates supranational and intergovernmental law, while ASEAN and NATO are intergovernmental organizations. For the difference between supranational and intergovernmental see Lorna Woods, Philippa Watson and Marios Costa, *Steiner & Woods: EU Law* (Oxford: Oxford University Press, 2017), chapters 2 and 3; Nigel Foster, *Foster on EU Law* (Oxford: Oxford University Press, 2017), chapters 2 and 3; Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials* (Oxford: Oxford University Press), 2015, chapters 2 and 3; and many others.

central roles to non-governmental organizations and, to an extent, people, such as European Union law, *realpolitik* shows that impartiality in the way different international agents are considered is uneven—some states are “more equal” than others—and, therefore, the fairness of the current world order is highly questionable.

Ideally, the global order can progress from a pluralism of pluralisms to one version of pluralism that is widely sharable when no world order can be equally hospitable to all states, cultures, religions and persons it makes room for, or when no world order can please everyone in regard to how much inequality it engenders. Territorial disputes offer a platform to accommodate these pluralisms. Sovereign states have the option to quarrel or can cooperate and accept limitations without sacrificing their sovereignty.¹³ In the same vein, and taking into account individual and collective identities, individuals, groups and their representatives can be (i) partial for their state and/or their own interests; and also be (ii) impartial in their defense and promotion of rules to settle territorial disputes and guarantee a mutual peaceful and permanent understanding.

The next section presents a selection of ongoing and controversial cases in Europe and Asia. The first sub-section centers mainly on the role civil societies play in these disputes, the different identities at play as well as the agendas of their respective leaders. The second highlights the multi-contextual nature of two of the most volatile current disputes.

Europe

The European continent seems to have settled most historical differences between nations. Curiously, despite long periods of democratic governments, social, political, legal and financial stability in comparison to most areas in the world and the existence of the most developed (legally and politically) supranational entity in the globe, the European Union, there are still several unresolved territorial disputes. A common theme to all of them is civil societies that have clearly expressed their political wishes to either be independent or be part of one of the claiming states. For reasons specific to each case, and despite their right to self-determination, the wishes of these populations are overridden by at least one of the claiming agents in the dispute, or by the international community. European territorial disputes clearly challenge the ideal understanding in terms of a unique “state plan of life” because there are several identities at play: the wishes of the populations that live in the disputed territories, the wishes of the leaders and governments in each claiming state, and the wishes of individuals and societal groups of different kinds in each state.

Moreover, in all cases the leaders’ or governments’ prestige contributes to the lack of agreement between the claimants. The combination of internal prestige

13 See chapter 3. See also Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 4.

and a real or imaginary common external threat guarantees leaders a higher pay-off than a definitive and peaceful solution would. Indeed, the external or perceived threats contribute to form the group identity¹⁴ and domestic leaders take advantage of this circumstance in international relations, and in particular in territorial disputes.

Crimea

There are different historical views about the dispute over Crimea.¹⁵ On the one side, there are accounts that introduce Crimea as tightly linked to the Russian Empire since 1783 when Russia took control of the area formerly in the possession of the Ottoman Empire. It was transferred to Ukraine (at the time, the Ukrainian Soviet Socialist Republic) in 1954 at the initiative of the First Secretary of the Communist Party of the Soviet Union, Nikita Khrushchev.¹⁶ On the other side, some argue that the Crimean Peninsula had little or nothing to do with Russia.¹⁷ In a similar vein, there are divergent views about the legal status of this territorial dispute, the 1994 Budapest Memorandum and its consequences.¹⁸

While it is true that there is a crisis in the Crimean Peninsula, and tension is evident between Russia and Ukraine, there is also a fair share of rhetoric adding unnecessary considerations within legal and political sciences that do not seem to offer any tangible way out. The historical claim, *per se* futile to solve any territorial dispute,¹⁹ can be reduced to a few simple and demonstrable facts:²⁰ Crimea lies on

14 Michael W. Giles and Arthur S. Evans, "External Threat, Perceived Threat and Group Identity," *Social Science Quarterly* 66:1 (1985): 50–66. For a detailed look at the relationship between individual and national identity and international relations, see William Bloom, *Personal Identity, National Identity and International Relations* (Cambridge: Cambridge University Press, 1993).

15 Jorge Emilio Núñez, "A Solution to the Crimean Crisis: Egalitarian Shared Sovereignty Applied to Russia, Ukraine and Crimea," *Europe-Asia Studies* 69:8 (2017): 1163–1183.

16 Sergey Saluchev, "Annexation of Crimea: Causes, Analysis and Global Implications," *Global Societies Journal* 2 (2014): 37–46; William W. Burke-White, "Crimea and the International Legal Order," *Survival: Global Politics and Strategy* 56:4 (2014): 65–80; James C. Pearce and Anastasiya Yuchshenko, "Defending Russia, Securitising the Future: How the Past Shaped Russia's Political Discourse Regarding Crimea," *European Policy* 12 (2018): 85–106; and many others.

17 John Biersack and Shannon O'Lear, "The Geopolitics of Russia's Annexation of Crimea: Narratives, Identity, Silences, and Energy," *Eurasian Geography and Economics* 55:3 (2014): 247–269; Thomas D. Grant, "Annexation of Crimea," *American Journal of International Law* 109:1 (2015): 68–95; and many others.

18 David S. Yost, "The Budapest Memorandum and Russia's Intervention in Ukraine," *International Affairs* 91:3 (2015): 505–538.

19 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

20 Gwendolyn Sasse, *The Crimea Question: Identity, Transition, and Conflict* (Cambridge, Massachusetts: Harvard University Press, 2014); Neil Kent, *Crimea: A History*

a peninsula stretching out from the south of Ukraine between the Black Sea and the Sea of Azov. It is separated from Russia to the east by the narrow Kerch Strait. For centuries under Greek and Roman influence, Crimea became the center of a Tatar Khanate in 1443. Crimea, once an Ottoman vassal state, was annexed by the Russian Empire during the reign of Catherine the Great (1783). Crimea remained part of Russia until 1954, when it was transferred to Ukraine. Russia's President Vladimir Putin signed a treaty on the "Restitution of Crimea and Sevastopol inside the Russian Federation" on 18 March 2014, and thus Russia became the first state in continental Europe to annex part of another state's territory since the 1940s.

Crimea, as a territorial dispute, has many layers. It is clear there are domestic, regional and international issues at stake. Historical, sociological, ethnic and religious ties are present. Geostrategic location is key for many parties, not only Russia and Ukraine. In addition to the Crimean "local" crisis in which there are three agents that is Crimea, Ukraine and Russia, this dispute has larger repercussions geographically, politically and culturally speaking for the region and potentially for the whole globe.²¹ There are many powers external to the dispute with a variety of interests that are more interested in keeping the dispute on an ongoing basis than achieving a solution because the current situation offers them a higher payoff. Arguably, the expansion of NATO and the European Union may explain Russian behavior.²²

Sociologically and politically, civil society and Putin's presence are determinant. Importantly, domestic political prestige is one of the reasons why this territorial dispute, like many others, remains in a political and legal limbo. In terms of the Crimeans, most of the current academic and non-academic works focus on the 2014 referendum and question about its legitimacy and legality. However, there is earlier evidence about what people may have wanted. Controversially, the 1991 referendum and the 1994 poll may bring light in relation to the events in 2014.

Nine out of 15 Republics of the former USSR participated in the Soviet Union Referendum on 17 March 1991. Voting results in the territory of Crimea were included in the general Ukrainian results. In Crimea (without Sevastopol) 1,085,570 people (87.6 %) out of 1,239,092 (79.3% turnout) voted for the preservation of the Soviet Union.²³ Crimean president Yuriy Meshkov in 1994 openly called for independence. In a March 1994 poll 70% of the peninsula's population voted in favor of greater autonomy.²⁴ In 2014 a referendum with 83.10% voter turnout confirmed that 96.77% of those who took part were in

(London: Hurst, 2016); Hall Gardner, *Crimea, Global Rivalry, and the Vengeance of History* (New York: Palgrave Macmillan, 2015).

21 Mikhail A. Molchanov, "Ukraine and the European Union: a Perennial Neighbour?" *Journal of European Integration* 26:4 (2004): 451–473.

22 Maximilian Klotz, "Russia and the Ukrainian Crisis: A Multiperspective Analysis of Russian Behaviour, by Taking into Account NATO's and the EU's Enlargement," *Croatian International Relations Review* 80 (2017): 259–287.

23 Alexander Salenko, "Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014," *Max-Planck-Institut für ausländisches öffentliches Recht und Völker* (2015): 141–166.

24 Mark Clarence Walker, *The Strategic Use of Referendums: Power, Legitimacy, and Democracy* (New York: Palgrave Macmillan, 2003), chapters 3 and 4.

favor of reunifying Crimea with Russia.²⁵ The referendum asked voters to choose whether to reunify “Crimea with Russia as a subject of the Russian Federation” or to restore “the 1992 Crimea constitution and the status of Crimea as part of Ukraine.”²⁶ Since then, the 2014 referendum has been questioned.²⁷ Voter turnout in the Russian presidential election in the Crimea on 18 March 2018 was 42% of eligible voters.²⁸

Interestingly, the Crimean case shows that the “state plan of life” has at least two major axiological readings in terms of law and politics. While the international community challenges Russian annexation of Crimea and supports Ukraine’s views about use of force, and illegal occupation, the Russian Federation argues that it needs to protect the interests of those living in the disputed territories, based on historical entitlement, territorial integrity, etc. Meanwhile, the population in Crimea, claiming the right of self-determination, has asserted several times its wishes to be part of the Russian Federation.

Gibraltar

Similar to the Crimean case, Gibraltar has to do with political unification, bordering minorities and several individual and collective identities. Different from other territorial disputes, Gibraltar has already taken the first steps for what may be a future joint solution in law and politics.

Spanish, Arab, and other kingdoms have controlled Gibraltar.²⁹ In 1713, after a war with Britain Spain ceded Gibraltar in perpetuity to the United Kingdom under the Treaty of Utrecht. Despite the agreement, the dispute in regard to the peninsula has continued, with Spain claiming sovereign rights. The Gibraltarians rejected Spanish sovereignty twice in referendums (1967 and 2002). In the most recent referendum, the Gibraltarians rejected shared sovereignty between the United Kingdom and Spain.³⁰

25 Details about the Referendum Crimea 2014 available at <http://www.hjil.org/articles/hjil-38-3-white.pdf> accessed 03/August/2019.

26 *Ibid.*, 851.

27 UN Security Council Report (meeting 7138) March 2014 available at http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7138.pdf accessed 3 August, 2019; The UN General Assembly Resolution 68/262 March, 2014 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262 accessed 3/August/2019.

28 Details about the Russian Presidential Election 2018 and Crimea available at <https://www.uawire.org/chubarov-only-42-percent-of-crimeans-voted-in-russian-presidential-elections> accessed 3/August/2019.

29 George Hills, *Rock of Contention, a History of Gibraltar* (London: Robert Hale & Company, 1974). For more details about the early history of Gibraltar, see the official version at <http://www.gibraltar.gov.gi/history> and a contemporary account at <http://www.gibraltar.gov.gi/political-development>.

30 *The Guardian* 26/07/02 <http://www.guardian.co.uk/politics/2002/jul/26/foreignpolicy.uk> accessed on 2/September/2019.

Currently, under the Gibraltar Constitution Order (2006), Gibraltar remains part of the United Kingdom's dominions. The British government cannot enter into arrangements with other States in relation to the sovereignty of Gibraltar against the Gibraltarians' wishes. The Constitution recognizes the right to self-determination. However, under the Treaty of Utrecht, Spain has right of "*first refusal*" should Britain decide to relinquish sovereignty over Gibraltar. Domestically, Gibraltar is in charge of its internal affairs while the United Kingdom deals with foreign affairs and defense. In relation to Spain, a trilateral process of dialogue started in 2004, finally allowing the principle of "two flags, three voices."³¹ However, this kind of arrangement is more useful for managing an issue than resolving it.³²

Three salient issues characterize Gibraltar as a territorial dispute for the purpose of this monograph: the populations in Gibraltar and in La Línea, which form two very different collective identities with deep gaps between their economy that generate social movements; the European Union in light of Brexit; and overlapping maritime areas.

Several documents give a clear idea of what Gibraltarians want. The 1967 and 2002 referendums³³ demonstrated that Gibraltarians want to remain under British sovereignty. Yet, in 2016, the Gibraltarians made explicit their wishes to remain in the European Union.³⁴ The construction of national identity in Gibraltar, therefore, is still ongoing. In fact, the discursive construction and representation of the Gibraltar issue is different in Spain, the United Kingdom and Gibraltar.³⁵ Furthermore, while Gibraltarians have a robust economy, La Línea's financial and social situations fluctuate dramatically.³⁶

31 Peter Gold, "The Tripartite Forum of Dialogue: Is this the Solution to the 'Problem' of Gibraltar?" *Mediterranean Politics* 14 (2009): 79–97.

32 *Ibid.*

33 See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 7.

34 *Idem.* Details available at UK Electoral Commission (The 2016 EU Referendum) https://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/195603/Gibraltar-and-the-EU-Referendum.pdf and https://www.electoralcommission.org.uk/__data/assets/pdf_file/0008/215279/2016-EU-referendum-report.pdf, accessed 3/August/2019. The complete results available at UK Electoral Commission (EU Referendum results) <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information>, accessed 3/August/2019. Details about the EU Referendum question available at UK Electoral Commission (EU Referendum question assessment) <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/eu-referendum-question-assessment>, accessed 3/August/2019.

35 Ángela Alameda-Hernández, "SFL and CDA: Contributions of the Analysis of the Transitivity System in the Study of the Discursive Construction of National Identity (Case Study: Gibraltar)," *Linguistics Journal* 3:3 (2008): 160–175.

36 El País, "Life Around Gibraltar: One Line, Two Very Different Worlds," available at https://elpais.com/elpais/2017/04/12/inenglish/1491994179_137993.html accessed 25/July/2019; *The Wall Street Journal*, "Another Rock on the Road to

Both the United Kingdom and Spain are part of NATO and member states of the European Union. With Brexit, the situation in Gibraltar is uncertain.³⁷ Additionally, despite the fact Spain and the United Kingdom are part of NATO, the use of Gibraltar's facilities has been retarded. With this legal and political context, the delimitation of maritime zones is difficult and sovereignty over the entire stretch of water is in question.³⁸

Despite the attractive notion of "two flags, three voices" there are more interests surrounding the territorial dispute over Gibraltar. Clearly, there are two governments, Spain and the United Kingdom. The latter, in particular, is politically divided by the Brexit question. There is a population living in the territory under question and their wishes should be considered. However, there is also another population which will be directly affected by any decision: La Línea. This is not to assert they have a right to participate in any negotiation about Gibraltar's sovereignty; but the degree of fairness and justice in the event a settlement is achieved without considering them would be questionable. Finally, the bargaining power in organizations such as the European Union and NATO in terms of Spain and the United Kingdom and the respective alliances with other international agents is an issue.

Cyprus

Cyprus is one of the largest islands in the Mediterranean Sea, closely located to Syria (130 km), Turkey (80 km) and Greece (885 km). The island was Greek in terms of population and culture until the 1570s, when it was taken by the Ottoman Turks.³⁹ Britain occupied Cyprus in 1878 and it became a Crown Colony in 1925. Under British rule, there were already two clearly differentiated groups: the majority were Greek Cypriot while a large minority were of Turkish origin. Cyprus became independent in 1960. Since then, tension between the two groups has continued with Turkey intervening in 1974 and occupying part of the island. A transfer of populations between the two sides followed the creation in 1975 of the Turkish Federated State of Cyprus. Despite efforts to resolve the dispute like the Annan Plan,⁴⁰ the Attila Line divides the island and both communities with little hope of a resolution.⁴¹

Brexit: Gibraltar," available at <https://www.wsj.com/articles/another-rock-on-the-road-to-brexit-gibraltar-1522402202>, accessed 25/July/2019.

37 Uğur Burç Yildiz and Anil Çamyamaç, "Explaining the European Union's Changing Position towards the Gibraltar Question after the Brexit Referendum," *Mediterranean Journal of Social Sciences* 8:4 (2017): 21–30.

38 Peter Gold, "The Tripartite Forum of Dialogue: Is this the Solution to the 'Problem' of Gibraltar?" *Mediterranean Politics* 14 (2009): 79–97; George Hills, *Rock of Contention, a History of Gibraltar* (London: Robert Hale & Company, 1974); Howard Levie, *The Status of Gibraltar* (Boulder: Westview Press, 1983).

39 Alan J. Day, ed., *Border and Territorial Disputes* (Essex: Longman, 1982), 16–17.

40 Complete text of the Annan Plan available at http://www.hri.org/docs/annan/Anna_n_Plan_April2004.pdf, accessed 26/July/2019.

41 David Downing, *An Atlas of Territorial and Border Disputes* (London: New English Library, 1980), 114.

As with the other cases in this section, Cyprus presents a political conflict that includes two different ethnic groups, neither wishing to be part of a political union with their counterpart's motherland. The main points of analysis of the dispute over Cyprus for this monograph are: first, the division of the community between two clearly identified groups; second, the leaders on both side of the borders and their own agenda; and third, the acknowledgment that other elements that are part of the dispute, such as geostrategic location, history and natural resources, have an important role in maintaining the difference unresolved but are not as determinant as the interplay between the sociological element how the respective leaders use the views and perceptions internally and internationally; and, finally, the contextual factors in the region and globally such as other international agents and organizations such as the European Union, NATO and the United Nations.

Unsurprisingly, the historical narratives are different depending on the point of reference. Turkish Cypriots center on their exclusion from government and certain areas of the islands by the Greeks.⁴² Greek Cypriots highlight their removal by Turkish military.⁴³ Since 1974, displaced Greek Cypriots have claimed their right to return. Despite confirmation by international organizations and courts in relation to their right to restitution and compensation, the claimants have not obtained actual results.⁴⁴ In addition to the indigenous Greek and Turkish Cypriot communities, there is a third group of people in the dispute: the Turkish settlers, actively encouraged by the Turkish government, who arrived after 1974.⁴⁵

Greek and Turkish Cypriots have experienced the influence of internal and external factors in the creation and perpetuation of the sovereignty dispute over their island. Whether the difference is defined by externalities or internal friction between a majority and a minority is arguable. However, these elements are as significant as legal and political ones.⁴⁶ Greek leaders since 1974 have used the dispute to obtain national cohesion focused on redress of the national humiliation caused by Turkey's invasion and Greece's part as a protector.⁴⁷ Indeed, there is an interplay between the leader's prestige and the views and perceptions of

42 Ronald Fisher, "Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse," *Journal of Peace Research* 38:3 (2001): 307–326.

43 Joseph S. Joseph, *Cyprus: Ethnic Conflict and International Politics: From Independence to the Threshold of the European Union* (New York: St. Martin's Press, 1997); Michael A. Attalides, *Cyprus: Nationalism and International Politics* (New York: St. Martin's Press, 1979).

44 Scott Leckie, ed., *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Ardsley, New York: Transnational, 2003).

45 Mete Hatay, *Beyond Numbers: An Inquiry into the Political Integration of the Turkish "Settlers" in Northern Cyprus* (Oslo: Peace Research Institute, 2005).

46 Maria Hadjipavlou, "The Cyprus Conflict: Root Causes and Implications for Peacebuilding," *Journal of Peace Research* 44:3 (2007): 349–365.

47 Constantine Danopoulos, *Warriors and Politicians in Modern Greece* (Chapel Hill: Documentary Publications, 1985), chapter 6.

international and domestic audiences.⁴⁸ Public opinion in Greece and Turkey has been determinant in several occasions in pressuring the respective government to adopt measures against their counterpart in the dispute.⁴⁹

Arguably, mutual concessions and incentives in a future agreement may be the way to a definitive solution.⁵⁰ Indeed, a peaceful and permanent agreement would be optimal.⁵¹ Inclusion of international organizations may be of some assistance in moving toward an agreement. Yet, the United Nations' attempt with the Annan Plan failed. Along the same lines, whether the European Union offers an opening to a settlement is questionable.⁵² In fact, Greek and Turkish NATO membership has not prevented their rivalry over Cyprus and several escalations that could have led to open war.⁵³

Northern Ireland

Northern Ireland introduces two clearly defined sectors, that of the nationalists, mainly Roman Catholics, and that of the unionists, mainly Protestants. There are two communities existing within a single state (or in the case of Northern Ireland, in a single sub-state) which deal with their divisions by sharing the exercise of political authority. The current legal and political arrangements give a hint of how to deal with power-sharing institutions by including groups and differentiating them between compulsory and voluntary participation.

From the early settlers who arrived in Ireland from Britain in the 12th century to current times, Northern Ireland has been through constant tension between different religiously defined sectors in its society. The 1801 Act of Union which abolished the Irish Parliament and bound Ireland and Britain together as parts of the United Kingdom, the 1998 The Belfast Agreement, restored devolution in 2007 and Brexit are just a few key historical events that show how this territorial dispute has evolved in law and politics.⁵⁴

48 Paul K. Huth, *Standing Your Ground. Territorial Disputes and International Conflict* (Ann Arbor: The University of Michigan Press, 2001), 164; Tozun Bahcheli, *Greek-Turkish Relations since 1955* (Boulder, Colorado: Westview Press, 1990), chapter 4.

49 Christopher Hitchens, *Cyprus* (London: Quartet Books, 1984); Polyvios Polyviou, *Cyprus: Conflict and Negotiation 1960–1980* (London: Duckworth, 1980).

50 Neophytos Loizides, "Settlers, Mobilization, and Displacement in Cyprus: Antinomies of Ethnic Conflict and Immigration Politics, in *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts*, Oded Haklai and Neophytos Loizides, eds. (Stanford, California: Stanford University Press, 2015).

51 Malvern Lumsden, "The Cyprus Conflict as a Prisoner's Dilemma Game," *Journal of Conflict Resolution* 17:1 (1973): 7–32.

52 Thomas Diez, ed., *The European Union and the Cyprus Conflict: Modern Conflict, Postmodern Union* (Manchester: Manchester University Press, 2002), 203–212.

53 Paul K. Huth, *Standing Your Ground. Territorial Disputes and International Conflict* (Ann Arbor: The University of Michigan Press, 2001), 90.

54 David McKittrick and David McVea, *Making Sense of the Troubles: The Story of the Conflict in Northern Ireland* (Chicago: New Amsterdam Books, 2000); Elizabeth Crooke and Tom Maguire, *Heritage After Conflict: Northern Ireland* (Routledge, Taylor & Francis, 2018); and many others.

Northern Ireland presents many issues and several individual and collective identities. In the 2016 EU referendum, 58% of voters in Northern Ireland voted for Remain, while a narrow majority of the United Kingdom as a whole voted to leave the EU.⁵⁵ In addition to the local population, with Brexit, two main political views are salient, that of the United Kingdom and the European Union. The United Kingdom has recently made clear its position in terms of Northern Ireland and Ireland in light of the UK's withdrawal from, and new partnership with, the European Union.⁵⁶ In principle, the United Kingdom welcomes the establishment of a dialogue on Northern Ireland/Ireland issues between the UK and the EU negotiating teams in order to avoid a hard border. The UK maintains that there are four broad areas where a specific focus on the unique relationship between the UK and Ireland, and the importance of the peace process in Northern Ireland, are required in the initial phases of the dialogue: upholding the Belfast or "Good Friday" Agreement in all its parts, maintaining the Common Travel Area and associated rights, avoiding a hard border for the movement of goods, and preserving North-South and East-West cooperation, including on energy.

In turn, the European Union understands that Northern Ireland is the part of the UK most distinctly affected by Brexit.⁵⁷ The introduction of a "hard border" with the Republic of Ireland is a particular concern, with customs controls probable and immigration checks possible. Free movement across the island of Ireland remains a desired feature of a strong bilateral relationship which strengthened amid common EU membership and the Northern Ireland peace process. The EU acknowledges that Northern Ireland has no autonomy concerning Brexit. Northern Ireland's 2016 referendum vote to remain within the EU is, in constitutional terms, of no significance. The UK Supreme Court has stated categorically that the consent of the Northern Ireland Assembly is not required for the UK government to withdraw from the EU.

Legally and politically, the UK's relationship with the EU (and the option to terminate the relationship) is an excepted power, retained by the UK government. This means that no powers have been devolved to the Northern Ireland Assembly in this respect. The 1998 Northern Ireland Act gives the Assembly the right to pass laws but only in devolved policy areas, and does not affect the power of the UK Parliament to make laws for Northern Ireland. In turn, a bilateral deal between the UK and Irish governments to maintain the Customs Union between the two states would require

55 For a detailed analysis of the results in Northern Ireland see John Garry, "The EU Referendum Vote in Northern Ireland: Implications for Our Understanding of Citizens' Political Views and Behaviour," *Northern Ireland Assembly*, 2017 available at <https://www.qub.ac.uk/brexit/Brexitfilestore/Filetoupload,728121,en.pdf> accessed 1/August/2019.

56 "Northern Ireland and Ireland: Position Paper," from *HM Government*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf accessed 1/ August/2019.

57 The complete analysis is available under "The Impact and Consequences of Brexit for Northern Ireland" at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI\(2017\)583116_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI(2017)583116_EN.pdf) accessed 1/August/2019.

EU approval. The UK government has listed tariff-free trade across borders, via a special agreement with the EU, as a priority. Failure to conclude such a deal will significantly impact Northern Ireland as a site of tariff checks.

In terms of the population and their wishes, unsurprisingly, most nationalists voted to remain within the EU. They see themselves as Irish citizens and members of the EU, and wish to retain that status. A minimum demand is special status for Northern Ireland. Meanwhile, a majority of unionists voted to leave. These differences in the result, and the ongoing uncertainty over the impact of Brexit on the Irish border, have led to calls for a border poll to allow the whole island of Ireland to remain in the EU. The nationalist Social and Democratic Labour Party (SDLP) supports a referendum on Irish reunification after the Brexit negotiations but the Irish government has also taken the position that the time is not right for a border poll.⁵⁸

Asia

The Asian continent presents some of the longest-lasting and most complex territorial disputes. This section introduces the interplay between the domestic, regional and international contexts related to Kashmir and the South China Sea. In both cases, the domestic context is influenced by regional and international agents and, consequently, these territorial disputes continue endlessly and at times escalate into conflict because of issues that have little to do with the original claiming parties.

Kashmir ranks among the ten most prominent territorial disputes in the world in terms of intensity and in terms of magnitude.⁵⁹ Clearly, religious tension has been often the cause of social struggle in Kashmir, where one dominant group has oppressed minorities. Muslims represent 67% of the population and Hindus represent almost 30%.⁶⁰ Despite its relevance, religion tension is not a necessary or sufficient condition for the perennial and volatile nature of this difference. Indeed, this territorial dispute presents several other relevant issues.

Total trade worth \$3.37 trillion passed through the South China Sea⁶¹ in 2016, and 40% of global liquefied natural gas trade transited through the same area in

58 See “Irish Reunification,” from *The Institute for Government* available at <https://www.instituteforgovernment.org.uk/printpdf/6341> accessed 1/August/2019. For the most up-to-date information about Northern Ireland and Brexit see *The Institute for Government* at <https://www.instituteforgovernment.org.uk>.

59 “Approaches to Solving Territorial Conflicts. Sources, Situations, and Suggestions,” (Atlanta, The Carter Center, 2010, available at https://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/solving_territorial_conflicts.pdf, accessed 27/July/2019. See also Daniel J. Dzurek, “What Makes Some Boundary Disputes Important?” *IBRU Boundary and Security Bulletin* (1999–2000): 83–95; the author updated and expanded this work in the 2005 article “What Makes Territory Important: Tangible and Intangible Dimensions,” *GeoJournal*, 64: 263–274.

60 Census India 2001 complete data available at http://www.censusindia.gov.in/2011-common/census_data_2001.html accessed 2/August/2019.

61 Note that there is discussion of renaming parts of the South China Sea. The Philippines and Vietnam already call the South China Sea the West Philippine Sea and the

2017.⁶² The South China Sea presents a tremendously complex geopolitical dilemma with many issues, including sovereignty claims made by several agents.

Kashmir

Unsurprisingly, Kashmir⁶³ is geo-strategically important for both India and Pakistan due to its location. It is the main source of water and hydroelectric power generation for both countries. The glacial waters from Kashmir provide water and electricity to people in India. Two key rivers, Chanab and Jehlum, run through Kashmir towards Pakistan.

Pakistan is a medium-size sovereign state with a medium-size population, mainly Muslims. This country is adjacent to India and Kashmir. Pakistan is strategically located between South Asia, Central Asia and the Middle East. It is rich in various natural resources. Pakistan has one of the largest armed forces in the world.

India is one of the largest sovereign states in the world in territorial size, and is very densely populated. Indians are mainly Hindus with other several religious minorities. The territory is rich in natural resources. India has one of the largest armed forces in the world. Geographically, India is adjacent to Pakistan and Kashmir.

For the majority of Kashmiris, the sovereignty issue is an important problem. However, when compared to other domestic realities, the people of Kashmir on both sides of the Line of Control have other concerns they believe more relevant. In 2009 a poll was commissioned and administered in this territory. The study was published in 2010 by Chatham House (the Royal Institute of International Affairs) under the name “Kashmir: Paths to Peace.”⁶⁴ This was the first poll to be

East Sea, respectively. For the sake of simplicity, this monograph will use only “South China Sea” this body of water.

62 *Global Conflict Tracker* by Council of Foreign Relations <https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/territorial-disputes-in-the-south-china-sea>, accessed 29/July/2019.

63 For a review of the history of Kashmir see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 7; Victoria Schofield, *Kashmir in Conflict, India, Pakistan and the Unfinished War* (London: I.B. Tauris & Co., 2000); Sunil Chandra Ray, *Early History and Culture of Kashmir* (New Delhi: Munshiram Manoharlal Oriental Publishers, 1970); H. H. Wilson, *The Hindu History of Kashmir* (Calcutta: Susil Gupta, 1960); Mridu Rai, *Hindu Rulers, Muslim Subjects, Islam, Rights and the History of Kashmir* (London: C. Hurst & Co., 2004); Balraj Puri, *Kashmir Towards Insurgency (Revised and Updated)* (India: Orient Longman, 1995); Prem Shankar Jha, *Kashmir, 1947, Rival Versions of History* (Oxford: Oxford University Press, 1996); Josef Korbel, *Danger in Kashmir* (Princeton: Princeton University Press, 1954); Sumantra Bose, *The Challenge in Kashmir, Democracy, Self-determination and a Just Peace* (New Delhi: Sage Publications India, 1997).

64 The complete study is available at https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Asia/0510pp_kashmir.pdf, accessed 27/July/2019. Note: This study (like many others) has a main flaw: although it gives us a glimpse on what Kashmiris may think about the territorial dispute, it remains questionable to argue that this is what most of them want. Like any study, it is based on a sample. As a tool, it is indeed thought provoking. It would be desirable to have a more informed

conducted on both sides of the Line of Control that has separated Indian- and Pakistani-controlled Kashmir since the UN ceasefire on 1 January 1949. The sample was of 3,774 people who took part in face-to-face interviews. The respondents were adults aged over 16. Of the total respondents 2,374 were from 11 of the 14 districts in which make up Jammu and Kashmir. The rest of the respondents, 1,400 people, were from seven of the eight districts in Azad Jammu and Kashmir.

The vast majority thought unemployment was the most significant problem (66% in AJK and 87% in J&K). Kashmiris were also concerned about government corruption (22% AJK and 68% J&K), economic development (42% AJK, 45% J&K), human rights abuses (19% AJK, 43% J&K) and the Kashmir conflict itself (24% AJK, 36% J&K).

From this brief account, it is clear the strategic location of Kashmir as a link between India and Pakistan, intertwined with the economic value of the region's natural resources, is the tip of the iceberg. Religious, linguistic, cultural and historical ties between populations and a potential political unification add sociological and political components. The dispute offers many international angles, ranging from the balance of military forces between India and Pakistan as neighbors and competing powers to alliances with third parties. For instance, in the early days of the conflict "the mediation of the Soviet Union was instrumental in securing the cease-fire" due to "a political interest in restoring stability to an area close to the southern borders of the Soviet Union and avoiding the risk of Chinese intervention, while at the same time advancing Soviet influence in the region."⁶⁵ In addition to India, Pakistan, the former Soviet Union and China, the United States and the United Kingdom too played their part. While the United States "was too closely aligned with Pakistan"⁶⁶, the United Kingdom "cut off military aid and was attempting to have India condemned in the United Nations."⁶⁷

There is a myriad of domestic, regional and international elements present in this territorial dispute. Therefore, it is not strange that traditional remedies do not work and that, after the cease-fire, no progress has been made in resolving the fundamental issues. A succession of provisional arrangements, times of relative peace and crises have followed, and a permanent solution is yet to come. If India, Pakistan and Kashmir (and the regional and international communities) actually want peace and international security, they must take at least two steps: a) recognize the complexity in territorial disputes (they are not unidimensional); b) work toward a revised remedy that embraces this complexity and somehow accepts, or at least does not ignore, the interests of all parties.

questionnaire including clear conceptual references for the respondents, a broader sample, and a more detailed analysis.

65 J. G. Merrills, *International Dispute Settlement* (Cambridge: Cambridge University Press, 2017), 28.

66 *Ibid.*, 32.

67 *Ibid.*

The South China Sea

China affirms its territorial sovereignty and maritime rights and interests in the South China Sea (SCS) while, according to the Chinese government, upholding peace and stability in the area.⁶⁸ According to official statements, the SCS is a “bridge of communication and a bond of peace, friendship, cooperation and development between China and its neighbors.”⁶⁹ China’s claims of sovereignty⁷⁰ over the sea face several regional challengers, such as Brunei, Indonesia, Malaysia, the Philippines, Taiwan and Vietnam. China claims all the islands off the coast. China occupies nine islands while Malaysia occupies three, the Philippines five, Brunei two; Taiwan occupies one small islet. The complete coastline of Vietnam is along the SCS. Recently, China has increased efforts to reclaim land in the SCS by physically increasing the size of islands and creating new islands, and has increased its presence by constructing ports, military installations and airstrips.

Because Vietnam⁷¹ has a 2,000-mile coastline facing the SCS and 50% of its population lives along that coast, its government sees the region as its greatest security threat. In 2016, Vietnam designated approximately \$1.6 billion to maritime defense capabilities, and this figure is expected to increase to \$2 billion by 2020. The Vietnamese Navy and Air Force have had very little capacity to protect Vietnam’s maritime interests, but over the past decade both services have undergone some modernization.

China has direct influence over Vietnam in the area. For example, in March 2018, following pressure from China, Vietnam ended a partnership with Repsol to drill for oil at Vanguard Bank in the SCS.

Under President Rodrigo Duterte, the Philippines⁷² has changed its role as resistance against China’s position in the SCS, while simultaneously downgrading

68 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 (7 December, 2016) available at https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1379493.htm accessed 29/July/2019.

69 “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea” (13 July 2016). Complete document available at https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1380615.htm, accessed 29/July/2019.

70 A. Doak Barnett, *China and the Major Powers in East Asia* (Washington, DC: Brookings, 1977); Melvin Gurtov and Byoon-Moo Hwang, *China under Threat* (Baltimore: Johns Hopkins University Press, 1980); Allen Whiting, *The Chinese Calculus of Deterrence* (Ann Arbor: University of Michigan Press, 1975); and many others.

71 People’s Army Newspaper (Vietnam) available at <http://en.qdnd.vn/>; *The Maritime Executive* available at <https://www.maritime-executive.com/article/china-and-vietnam-to-settle-south-china-sea-claims#gs.8BA4b84>; *The Diplomat* available at <https://thediplomat.com/2018/04/chinas-successful-coercion-of-vietnam-in-the-south-china-sea-deserves-us-attention/> all accessed 3/August/2019.

72 Articles in *Asian Maritime Transparent Initiative* available at <https://amti.csis.org/duterte-philippines-contested-foreign-policy/>; *The National Interest* available at <https://nationalinterest.org/blog/the-buzz/are-china-the-philippines-agreeing-share-the-south-china-sea-25229>; *Al Jazeera* available at <https://www.aljazeera.com/news/2018/05/philippines-la-clustre-fight-south-china-sea-180522174023071.html> all accessed 3/August/2019.

security cooperation with the United States, a treaty ally. However, data shows that traditional allies like Japan, the United States and Europe lead the investment landscape in the Philippines. During Duterte's first year in office, Japan's investments climbed from \$490 million in 2016 to \$600 million in 2017, an increase of 23.79%. American investment dropped by almost 70%, but still amounted to \$160 million. In contrast, Chinese investment in the period went from only \$27 million in 2016 to \$31 million in 2017. Japanese investment was more than 23 times that of China.

Malaysia⁷³ has preferred to rely on diplomacy and consensus that avoids embarrassing other states in addressing its maritime disputes in the SCS. After securing Malaysia's claim on three Spratly islands through military occupation, Mahathir's administration focused greater diplomatic efforts to get all disputing parties including China, to consult with each other, using the Association of Southeast Asian Nations (ASEAN) as a main platform for these discussions. The "Mahathir Doctrine" maintains that the SCS should be a sea of cooperation, connectivity, and community-building, not confrontation or conflict. After Mahathir retired in 2003, these policies were adapted with little innovation by his successors.

The Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands (together known as the South China Sea Islands) were first discovered, named, and used by the ancient Chinese, and were incorporated into national territory and administered by imperial Chinese governments. From the perspective of history, geography, or international law, the SCS islands and their surrounding waters are an integral part of Taiwan's waters.⁷⁴ Taiwan maintains all rights over them in accordance with international law.

73 Articles in *Asia Dialogue* available at <http://theasiadialogue.com/2018/05/07/malaysias-ge18-game-changer-in-the-south-china-sea/>; *The Diplomat* available at <https://thediplomat.com/2018/03/should-malaysia-rename-its-part-of-the-south-china-sea/>; *Asian Maritime Transparent Initiative* available at <https://amti.csis.org/tracking-malaysias-force-build-up/>; *The Interpreter* available at <https://www.lowyinstitute.org/the-interpreter/decoding-mahathir-doctrine>, all accessed 3/August/2019.

74 Position Paper on ROC South China Sea Policy. Republic of China (Taiwan), 21 March 2016, available at http://multilingual.mofa.gov.tw/web/web_UTF-8/South/Position%20Paper%20on%20ROC%20South%20China%20Sea%20Policy.pdf; article in *Tides of Change*, available at <https://www.brookings.edu/wp-content/uploads/2016/06/taiwan-south-china-sea-kuok-paper.pdf>; "The Dispute in the South China Sea and Taiwan's Approach," available at <http://tkuir.lib.tku.edu.tw:8080/dspace/retrieve/52808/2011-DECEMBER%20The%20Dispute%20in%20the%20South%20China%20Sea%20and%20Taiwan%27.pdf>; "Chinese Political and Military Thinking Regarding Taiwan and the East and South China Seas," available at https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT470/RAND_CT470.pdf, all accessed 3/August/2019.

Brunei's claim⁷⁵ is relatively limited in comparison to those of the other claimant states. Brunei claims only a 200-nautical-mile exclusive economic zone (EEZ) under the terms of UNCLOS, in addition to several land features falling within its legally delimited boundaries in the southern portion of the sea, including Louisa Reef, Owen Shoal and Rifleman Bank. In direct contrast to each of the other claimants, Brunei does not occupy any land features in the sea and maintains no permanent military presence in the area to enforce its claim. The unspoken arrangement whereby Brunei remains silent on the SCS issue in order to secure Chinese investment has the potential to benefit both countries.

Like many other territorial disputes in the SCS, the origin of the contemporary dispute between China and Indonesia⁷⁶ can be traced back to the 1947 map drawn by Nationalist Chinese diplomats that featured a dashed line encircling much of the South China Sea. In every version, one of the dashes intersects the northern boundary of Indonesia's declared EEZ north of the Natunas, around 1,400 kilometres from the Chinese mainland. The waters in the disputed area are an important fishery and the seabed below holds large natural gas reserves.

The SCS constitutes today's most difficult foreign policy dilemma for Cambodia⁷⁷ since ASEAN and China are both crucially important for the kingdom's security and economic development. Cambodia's position on the SCS supports implementing the declaration of conduct (DOC), urging ASEAN and China to make the utmost effort to finalize the code of conduct (COC), and encouraging countries concerned to discuss and resolve their issues because ASEAN is not a court.

75 "Malaysia and Brunei: An Analysis of their Claims in the South China Sea," available at https://www.cna.org/cna_files/pdf/IOP-2014-U-008434.pdf; "Key Issues and Dilemmas for Brunei" available at <https://www.unsw.adfa.edu.au/sites/default/files/uploads/nassp-pdf/2.1%2C%20Key%20Issues%20and%20Dilemmas%20for%20Brunei%20and%20Malaysia%20in%20the%20South%20China%20Sea%20Dispute.pdf>; "Brunei Abandons South China Sea Claim for Chinese Finance;" available at <https://www.geopoliticalmonitor.com/brunei-abandons-south-china-sea-claim-for-chinese-finance/>; *The Diplomat*, available at <https://thediplomat.com/2018/02/has-china-bought-bruneis-south-china-sea-silence/>, all accessed 3/August/2019.

76 "Indonesia in the South China Sea," available at <https://www.lowyinstitute.org/sites/default/files/documents/Connelly%2C%20Indonesia%20in%20the%20South%20China%20Sea.pdf>; "What Does Indonesia's Renaming of Part of the South China Sea Signify?" available at https://iscas.edu.sg/images/pdf/ISEAS_Perspective_2017_64.pdf; "Study on Development of Natuna Regency," available at https://file.scrip.org/pdf/JSS_2018042815443864.pdf; "Indonesian Foreign Policy: The China Factor," available at <http://www.futuredirections.org.au/wp-content/uploads/2018/09/Indonesian-Foreign-Policy-The-China-Factor.pdf>, all accessed 3/August/2019.

77 The South China Sea and ASEAN Unity: A Cambodian Perspective available at <https://thcasean.org/read/articles/268/The-South-China-Sea-and-ASEAN-Unity-A-Cambodian-Perspective>; Cambodia-China Relations: A Positive Sum Game? available at <https://d-nb.info/1029143560/34>; Cambodia: The Winner Takes It All available at https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C33_chandarin_hdk.pdf; *The Diplomat* available at <https://thediplomat.com/2018/04/the-south-china-sea-and-asean-32nd-summit-meeting/> all accessed 3/August/2019.

Vietnam, The Philippines, Malaysia and Brunei are members of ASEAN.⁷⁸ Indonesia, which is also an ASEAN member, has an exclusive economic zone (EEZ) generated from the Natuna Islands that overlaps China's so-called "nine-dash-line claim" in the SCS. Indonesia officially insists that it is not a claimant. ASEAN, which has tried to manage the dispute multilaterally through dialogue and consultation with China, has not yet been successful in playing a mediating role due to a lack of consensus among its member states on how to address sovereignty disputes.

ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) in November 2002 in Phnom Penh. At their meeting on 6 August 2017 in Manila, the Foreign Ministers of ASEAN Member States and China adopted the framework of the Code of Conduct. At the 20th ASEAN-China Summit in November 2017, ASEAN Member States and China officially announced the launch of the COC negotiations. ASEAN and China agreed on a Single Draft Code of Conduct in the South China Sea (COC) Negotiating Text at the 15th ASEAN-China Senior Officials' Meeting on the Implementation of the DOC (SOM-DOC) held in Changsha, China, on 27 June 2018, which will be the basis of COC negotiations.

While regionally, the SCS includes several claimants, the international context presents other interested agents. Tokyo's own security interests and geopolitical considerations for its position within the Asian security order—in particular, its competition with a rising China—drive its approach toward the SCS.⁷⁹ Furthermore, Japan's perspective toward the SCS, through which \$5 trillion in maritime trade traverses annually, is informed by the overall importance of the region for global commerce. In particular, as Japan is a net importer of energy, its energy security is highly dependent on commercial sea lanes crossing the SCS.

Approximately two-thirds of Australia's exports pass through the SCS and the island corridors north of Australia.⁸⁰ Any internal or external conflicts between

78 The South China Sea Dispute (Indo-Pacific Strategic Papers), available at http://www.defence.gov.au/ADC/Publications/IndoPac/Rustandi_IPSP.pdf; Overview of ASEAN-China Dialogue Relations (updated August 2018) available at http://asean.org/wp-content/uploads/2012/05/Overview-of-ASEAN-China-Relations-August-2018_For-Website.pdf; Assessing the ASEAN-China Framework for the Code of Conduct for the South China Sea available at https://www.iscas.edu.sg/images/pdf/ISEAS_Perspective_2017_62.pdf all accessed 3/August/2019.

79 Hong Zhao, "Chinese and Japanese Infrastructure Investment in Southeast Asia: from Rivalry to Cooperation?" *Institute of Developing Economies* 689:2 (2018): 1–31; "Japan's Grand Strategy in the South China Sea" available at http://viet-studies.net/kinhte/JapanGrandStrategy_InoguchiPanda.pdf; "Japan's Policy towards the South China Sea" available at https://www.hsfk.de/fileadmin/HSFK/hsfk_publicationen/prifl40.pdf; "The South China Sea: A View from Japan" available at http://www.nids.mod.go.jp/english/publication/kiyo/pdf/2014/bulletin_c2014_7.pdf, all accessed 3/August/2019.

80 "Australia and the South China Sea: debates and dilemmas" available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/SouthChinaSea; "Australian Foreign Policy White Paper"

countries can directly impact upon the prosperity of Australia. Australia's position on the SCS remains pragmatic, unchanged over the last few years and adheres to the oft-repeated formulation: Australia urges claimants to act in accordance with international law, to avoid coercive behaviour and unilateral actions, to engage in dialogue and to reach a resolution through peaceful means.

For the United States,⁸¹ the SCS is an important area of the Asia-Pacific region for three reasons: 1) it is part of a major transit route for maritime commercial traffic to and from East Asia and for the United States Navy; 2) disputes over the ownership of its many small islands, reefs, atolls, and rocks between China and several nearby Southeast Asian states (including one United States ally, the Philippines) generate tensions that could result in conflict and instability; and 3) Beijing could eventually use its growing influence in the area to create a sphere of influence detrimental to United States interests.

The Obama administration's arrangement put noteworthy emphasis on conciliatory and synergistic endeavors, from expanding reactions of Chinese activities in the area, to assembling lawful responses to these questions, to requiring the Southeast Asian agents to work with each other and the United States to build political influence. The Trump organization's methodology so far has sought an increasingly blended reaction on the SCS issue. At first, the administration appeared to flag a progressively vigorous reaction to China in the SCS; however, its approach is erratic.

Conclusion

This chapter considered several ongoing territorial disputes in Europe and Asia. Although there are historical roots in each case, analysis focused on two main facets. With the European cases the emphasis was on the sociological components while the Asian examples highlighted interconnections among the domestic, regional and international contexts.

available at <https://www.fpwwhitepaper.gov.au/sites/g/files/net3551/f/submission/170209-149-matthew-wilson.pdf>; "Australia and the South China Sea" available at <http://www.australiachinarelations.org/sites/default/files/20170307ACRIFACTS%20-%20Australia%20and%20the%20South%20China%20Sea%20-%20an%20update.pdf>; "Australia's National Interest" available at http://www.defence.gov.au/ADC/Publications/documents/digest/Spring_2017/IPSD_Karotam_spring2017.pdf; "ASEAN-Australia (Special Summit, March 2018)" available at <http://apo.org.au/system/files/134871/apo-nid134871-608261.pdf>, all accessed 3/August/2019.

- 81 "The South China Sea: Assessing U.S. Policy and Options for the Future" available at https://www.cna.org/cna_files/pdf/iop-2014-u-009109.pdf; "America's Security Role in the South China Sea" available at https://carnegieendowment.org/files/Formatted_Michael_Swaine_testimony.pdf; "American Domestic Politics, Public Opinion, and the South China Sea Disputes" available at <http://web.isanet.org/Web/Conferences/HKU2017-s/Archive/87970b6e-80cd-455c-a0c9-b0159af97505.pdf>; "United States' Policy Strategy in South China Sea" available at <http://innovationinfo.org/articles/SJASR-6-163.pdf> all accessed 3/August/2019.

This chapter shifted from the ideal view⁸² of a unique “state plan of life” to acknowledgment that real case scenarios include a variety of individual and collective interests that may (but do not need to) have different views about justice and the dispute itself.

The first section centered on ongoing territorial disputes in Europe. Despite their particularities, the cases of Crimea, Gibraltar, Cyprus and Northern Ireland provide clear indications of two constant characteristics in territorial disputes. First, civil societies may include internal divisions based on history, ethnicity, religion, etc. that can have an impact in the way these different groups perceive the dispute and the role as a political community in them. Second, governments and leaders may appear to intend to solve territorial disputes, but because these kinds of disputes may result in a higher pay-off to their prestige and power (rather than a definitive and peaceful solution), they may opt to keep the dispute in a political and legal *status quo*.

The section dedicated to territorial disputes in Asia shows how in the cases of Kashmir and the South China Sea there are regional components such as the claiming agents and the populations in the disputed territories. Along with local and regional actors, there are international agents, not necessarily regional ones, that have a direct interest in the area and, consequently, the way in which the dispute develops depending on their alliances with local and regional claimants. Indeed, any study in relation to territorial dispute would be incomplete without the inclusion of all three contexts: domestic, regional and international.

Bibliography

- Alameda-Hernández, Ángela. “SFL and CDA: Contributions of the Analysis of the Transitivity System in the Study of the Discursive Construction of National Identity (Case Study: Gibraltar).” *Linguistics Journal* 3:3 (2008): 160–175.
- Attalides, Michael A. *Cyprus: Nationalism and International Politics*. New York: St. Martin’s Press, 1979.
- Bahcheli, Tozun. *Greek-Turkish Relations since 1955*. Boulder, Colorado: Westview Press, 1990.
- Barnett, A. Doak. *China and the Major Powers in East Asia*. Washington, DC: Brookings, 1977.
- Biersack, John and O’Lear, Shannon. “The Geopolitics of Russia’s Annexation of Crimea: Narratives, Identity, Silences, and Energy.” *Eurasian Geography and Economics* 55:3 (2014): 247–269.
- Bloom, William. *Personal Identity, National Identity and International Relations*. Cambridge: Cambridge University Press, 1993.
- Bose, Sumantra. *The Challenge in Kashmir, Democracy, Self-determination and a Just Peace*. New Delhi: Sage Publications India, 1997.

82 The author previous work presented sovereignty conflicts as a matter of ideal theory and, therefore, did not consider the real implications of territorial disputes. See Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

- Burke-White, William W. "Crimea and the International Legal Order." *Survival: Global Politics and Strategy* 56:4 (2014): 65–80.
- Commons, John R. "A Sociological View of Sovereignty." *American Journal of Sociology* 5:5 (1900): 683–695.
- Craig, Paul and de Búrca, Gráinne. *EU Law: Text, Cases and Materials*. Oxford: Oxford University Press, 2015.
- Crooke, Elizabeth and Maguire, Tom. *Heritage After Conflict: Northern Ireland*, Routledge, Taylor & Francis, 2018.
- Danopoulos, Constantine. *Warriors and Politicians in Modern Greece*. Chapel Hill: Documentary Publications, 1985.
- Day, Alan J., ed. *Border and Territorial Disputes*. Essex: Longman, 1982.
- Diez, Thomas, ed. *The European Union and the Cyprus Conflict: Modern Conflict, Post-modern Union*. Manchester: Manchester University Press, 2002.
- Downing, David. *An Atlas of Territorial and Border Disputes*. London: New English Library, 1980.
- Dzurek, Daniel J. "What Makes Some Boundary Disputes Important." *IBRU Boundary and Security Bulletin* (1999–2000): 83–95.
- Dzurek, Daniel J. "What Makes Territory Important: Tangible and Intangible Dimensions." *GeoJournal* 64 (2005): 263–274.
- Fisher, Ronald. "Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse." *Journal of Peace Research* 38:3 (2001): 307–326.
- Foster, Nigel. *Foster on EU Law*. Oxford: Oxford University Press, 2017.
- Gardner, Hall. *Crimea, Global Rivalry, and the Vengeance of History*. New York: Palgrave Macmillan, 2015.
- Giles, Michael W. and Evans, Arthur S. "External Threat, Perceived Threat and Group Identity." *Social Science Quarterly* 66:1 (1985): 50–66.
- Gold, Peter. "The Tripartite Forum of Dialogue: Is this the Solution to the 'Problem' of Gibraltar?" *Mediterranean Politics* 14 (2009): 79–97.
- Grant, Thomas D. "Annexation of Crimea." *American Journal of International Law* 109:1 (2015): 68–95.
- Gurtov, Melvin and Hwang, Byoon-Moo. *China under Threat*. Baltimore: Johns Hopkins University Press, 1980.
- Hadjipavlou, Maria. "The Cyprus Conflict: Root Causes and Implications for Peace-building." *Journal of Peace Research* 44:3 (2007): 349–365.
- Hatay, Mete. *Beyond Numbers: An Inquiry into the Political Integration of the Turkish "Settlers" in Northern Cyprus*. Oslo: Peace Research Institute, 2005.
- Hills, George. *Rock of Contention, a History of Gibraltar*. London: Robert Hale & Company, 1974.
- Hitchens, Christopher. *Cyprus*. London: Quartet Books, 1984.
- Huth, Paul K. *Standing Your Ground. Territorial Disputes and International Conflict*. Ann Arbor: The University of Michigan Press, 2001.
- Jha, Prem Shankar. *Kashmir, 1947, Rival Versions of History*. Oxford: Oxford University Press, 1996.
- Joseph, Joseph S. *Cyprus: Ethnic Conflict and International Politics: From Independence to the Threshold of the European Union*. New York: St. Martin's Press, 1997.
- Kent, Neil. *Crimea: A History*. London: Hurst, 2016.
- Kim, Youngho. "Does Prestige Matter in International Politics?" *Journal of International and Area Studies* 11:1 (2004): 39–55.

- Kinne, Brandon J. "Dependent Diplomacy: Signalling, Strategy, and Prestige in the Diplomatic Network." *International Studies Quarterly* 58:2 (2014): 247–259.
- Klotz, Maximilian. "Russia and the Ukrainian Crisis: A Multiperspective Analysis of Russian Behaviour, by Taking into Account NATO's and the EU's Enlargement." *Croatian International Relations Review* 80 (2017): 259–287.
- Korbel, Josef. *Danger in Kashmir*. Princeton: Princeton University Press, 1954.
- Leckie, Scott, ed. *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*. Ardsley, New York: Transnational, 2003.
- Levie, Howard. *The Status of Gibraltar*. Boulder: Westview Press, 1983.
- Loizides, Neophytos. "Settlers, Mobilization, and Displacement in Cyprus: Antinomies of Ethnic Conflict and Immigration Politics." In *Settlers in Contested Lands. Territorial Disputes and Ethnic Conflicts*, Oded Haklai and Neophytos Loizides, eds. Stanford, California: Stanford University Press, 2015.
- Lumsden, Malver. "The Cyprus Conflict as a Prisoner's Dilemma Game." *Journal of Conflict Resolution* 17:1 (1973): 7–32.
- Markey, Daniel. "Prestige and the Origins of War: Returning to Realism." *Security Studies* 8:4 (1999): 126–172.
- McKittrick, David and McVea, David. *Making Sense of the Troubles: The Story of the Conflict in Northern Ireland*. Chicago: New Amsterdam Books, 2000.
- Merrills, J. G. *International Dispute Settlement*. Cambridge: Cambridge University Press, 2017.
- Molchanov, Mikhail A. "Ukraine and the European Union: a Perennial Neighbour?" *Journal of European Integration* 26:4 (2004): 451–473.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Early Years." *International Journal for the Semiotics of Law* 27 (2014): 645–664.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor and Francis Group, 2017.
- Núñez, Jorge Emilio. "A Solution to the Crimean Crisis: Egalitarian Shared Sovereignty Applied to Russia, Ukraine and Crimea." *Europe-Asia Studies* 69:8 (2017): 1163–1183.
- O'Neill, Barry. *Honor, Symbols and War*. Michigan: The University of Michigan Press, 1999.
- Oberschall, Anthony. "Preventing Genocide." *Contemporary Sociology* 29 (2000): 1–13.
- Pearce, James C. and Yuchshenko, Anastasiya. "Defending Russia, Securitising the Future: How the Past Shaped Russia's Political Discourse Regarding Crimea." *Europolicy* 12 (2018): 85–106.
- Polyviou, Polyvios. *Cyprus: Conflict and Negotiation 1960–1980*. London: Duckworth, 1980.
- Puri, Balraj. *Kashmir Towards Insurgency (Revised and Updated)*. India: Orient Longman, 1995.
- Rai, Mridu. *Hindu Rulers, Muslim Subjects, Islam, Rights and the History of Kashmir*. London: C. Hurst & Co., 2004.
- Rawls, John. *A Theory of Justice, Revised Edition*. Oxford: Oxford University Press, 1999.
- Ray, Sunil Chandra. *Early History and Culture of Kashmir*. New Delhi: Munshiram Manoharlal Oriental Publishers, 1970.
- Salenko, Alexander. "Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014." *Max-Planck-Institut für ausländisches öffentliches Recht und Völker* (2015): 141–166.
- Saluchev, Sergey. "Anexation of Crimea: Causes, Analysis and Global Implications." *Global Societies Journal* 2 (2014): 37–46.

- Sasse, Gwendolyn. *The Crimea Question: Identity, Transition, and Conflict*. Cambridge, Massachusetts: Harvard University Press, 2014.
- Schofield, Victoria. *Kashmir in Conflict, India, Pakistan and the Unfinished War*. London: I.B. Tauris & Co. Ltd., 2000.
- Sen, Amartya. *The Idea of Justice*. Cambridge, Massachusetts: Harvard University Press, 2009.
- Walker, Mark Clarence. *The Strategic Use of Referendums: Power, Legitimacy, and Democracy*. New York: Palgrave Macmillan, 2003.
- Whiting, Allen. *The Chinese Calculus of Deterrence*. Ann Arbor: University of Michigan Press, 1975.
- Wilson, H. H. *The Hindu History of Kashmir*. Calcutta, India: Susil Gupta, 1960.
- Woods, Lorna, Watson, Philippa and Coasta, Marios. *Steiner & Woods: EU Law*. Oxford: Oxford University Press, 2017.
- Yildiz, Uğur Burç and Çamyamaç, Anil. “Explaining the European Union’s Changing Position towards the Gibraltar Question after the Brexit Referendum.” *Mediterranean Journal of Social Sciences* 8:4 (2017): 21–30.
- Yost, David S. “The Budapest Memorandum and Russia’s Intervention in Ukraine.” *International Affairs* 91:3 (2015): 505–538.
- Zhao, Hong. “Chinese and Japanese Infrastructure Investment in Southeast Asia: from Rivalry to Cooperation?” Chiba, Japan: Institute of Developing Economies 689:2 (2018): 1–31.

8 Territorial disputes in Africa and Middle East

Introduction

This chapter presents territorial differences in Africa and Middle East.¹ Chapter 6 included references to the historical roots behind the territorial disputes in the Americas. Chapter 7 highlighted the sociological facets, both in terms of civil societies and leader's prestige, in territorial disputes in Europe and the reciprocal influence between the domestic, regional and international contexts in major differences in Asia. It is not that territorial disputes center exclusively on one of these issues at stake—e.g. historical roots, border minorities, financial situation, natural resources, etc.—but a combination of them. Indeed, one of these elements may be more central than the others in terms of the initiation and continuation of these disputes, and whether they settle peacefully or they escalate into conflict. However, it is the combination of these different issues at stake that characterize fully territorial disputes and to neglect any of them is to guarantee their ongoing and pervasive nature.

Similarly, some of these territorial disputes may center more heavily on domestic issues while others have to do mainly with the regional or international contexts. In any case, to narrow the study to one of these spheres—i.e. domestic, regional or international—is to have a partial view of the complexity of territorial disputes and, therein, to misinterpret the real depth of each difference.

Consequently, this chapter brings together the issues at stake already introduced and all three contexts—i.e. domestic, regional and international—using ongoing territorial disputes in Africa and the Middle East to showcase them. The first section aims to demonstrate that current territorial disputes and sovereignty conflicts in Africa have colonial roots that still impact sociologically, financially, legally and politically the continent. Similar to the Americas, former colonial powers left behind “artificially” created divisions in what used to be a “territory” sociologically defined. The assessment aims to show how European understanding in legal and political sciences is not appropriate to comprehend the complexity of

1 Note the Middle East is geographically part of Asia. However, the author includes a separated and dedicated section in order to review in more detail one of the most controversial (arguably, the most controversial) territorial disputes in human history: the Israel-Palestine difference.

these realities. The interaction between the domestic-regional original pre-European social tensions and the international contexts given by European influence first, and currently by central states such as the United States and China agendas fuel ongoing territorial disputes.

The last section will introduce broadly territorial disputes in the Middle East and in particular the Israeli-Arabian conflict. The analysis will center on the evaluation of domestic, regional and international issues at stake with particular focus on religion, geopolitical importance, right-peopling of the territory and leaders' prestige.

Multilayer and multi-contextual territorial disputes and positive versus negative synergy

There are several issues at stake² in any territorial dispute and some are constant or, arguably, more relevant than others depending on each case and the context of reference—i.e. domestic, regional and international. They may center on any of the elements that characterize a political community—i.e. territory, population, government and law. Indeed, territorial disputes may be characterized by reference to territorial sub-elements such as strategic location, territorial integrity and natural resources, to name a few. Yet, territorial disputes may be as well based on population—e.g. bordering minorities, refugee's crisis, common ethnicity, etc.—government and law—e.g. political unification, leader's prestige, legal entitlement.

As any academic classification, legal and political theories present, conceptualize and consider these issues at stake independently. In the real world, any given territorial dispute is a combination of two or more of these issues. Similarly, legal and political sciences explore these disputes by reference to the either the domestic, regional or international contexts. However, it is when the study about a territorial dispute embraces all the issues at stake and takes into account the several contexts involved that a more accurate view results. Consequently, it is important to think of territorial disputes as multilayer and multi-contextual phenomena with different reasons behind them that have to do with cultural, legal, historical, sociological, geographical, financial and many other elements present locally, regionally and internationally.

In law, there are empirical as well as logical issues. In political science, there are ideal and non-ideal issues.³ Current studies in legal and political sciences about territorial disputes center only on the logical (law) and ideal (politics) side or on

2 See chapter 4. See also Paul K. Huth, *Standing Your Ground. Territorial Disputes and International Conflict* (Ann Arbor: The University of Michigan Press, 2001), 72–85.

3 In law, Alchourrón and Bulygin clearly state that in legal science there are empirical as well as logical issues. In political science, there is an existent and evolving tension between ideal and non-ideal theory. See C. E. Alchourrón and E. Bulygin, *Normative Systems*, Library of Exact Philosophy (Wien: Springer-Verlag, 1971), 53; A. John Simmons, "Ideal and Nonideal Theory," *Philosophy and Public Affairs* 38:1 (2010): 5–36.

the empirical (law) and non-ideal (politics) side. However, it is because these studies are partial to purely conceptual analysis or factual exploration of a segment of the respective territorial dispute under analysis—i.e. either territory, population, government or law—in a particular context—i.e. domestic, regional or international—that these studies are incomplete.⁴

Any territorial dispute is a combination of several issues at stake—i.e. in terms of territory, population, government and law—in different contexts—i.e. domestic, regional and international. These issues work in synergy for the initiation and continuation of territorial disputes and may escalate into conflict or settle in a peaceful and permanent agreement. That is to say, synergy implies a particular relationship amongst the members, components or objects of the given whole entity. The individual members, components or objects can work better when working together towards a common goal. Contrarily, the individual members, components or objects can work individually or together against the whole. In other words, the individual components of the whole can exist on their own, autonomously and independently; however, working together in a synergetic manner may improve their performance in terms of the whole entity (positive synergy) or may work against it (negative synergy).

That is exactly the situation in territorial disputes. Issues at stake can be assessed in their individuality or together, in one or several contexts. However, it is only when a territorial dispute is explored in synergy that it becomes meaningful. To be more precise, the traditional scholarly studies in legal and political sciences center on the same question, the question of territorial disputes. However, legal and political sciences fasten on only one aspect of legal or political reality: on the existential; or an idealistic legal or political aspect, on the essential. The former views only the certainty, the factual power; the latter sees territorial disputes only from the angle of justice and fairness. It is not that one view or segment in these views is more important than the others. Different studies have simply suppressed one member of the relation in favour of the other. Instead, a more comprehensive analysis should think of an ideal or non-ideal, and empirical or theoretical view of territorial disputes as neither antagonistic nor identifiable, but somehow related as different individual members, components or objects of that whole that may stand in a fruitful exchange with one another provided they are assessed in positive synergy.

In what follows, Africa and the Middle East introduce a sample of this comprehensive view in territorial disputes. Both regions have differences that present several issues at stake including colonial roots, bordering minorities, refugees, leader's prestige, natural resources, geostrategic location, to name a few and a combination of domestic, regional and international elements and agents. Each of these elements may be assessed individually in terms of its factual or ideal existence, and contextually, from a domestic, regional or international standpoint.

4 In order to demonstrate the fragmentation (either by science or object of study) of current scholarly publication about territorial disputes see chapter 1, fn. 3. Also, for "global" sources fragmented by discipline see chapter 1, fn. 7.

Alternatively, each of these elements may be assessed as one of several components in a given territorial dispute. The latter is the aim of the following sections. Understandably, these sections will give the reader only a glimpse of such a multilayer and multi-contextual approach based on a positive synergy understanding. For a thorough and more meaningful analysis, each individual territorial dispute deserves dedicated multi-disciplinary research that embraces all the issues at stake in terms of territory, population, government and law, locally, regionally and internationally.

Africa

Historical roots to dispute

Africa presents several territorial disputes.⁵ The usual causes have to do with natural resources and bordering minorities. Nevertheless, similar to the cases in the Americas, they all share a common origin: European colonialism.

In the particular cases in Africa, territorial disputes include “boundary dispute” and “border dispute.” The term “territorial dispute” is broader in meaning than others such as the ones referred only to “boundary” or “border.” While a boundary is an imaginary line that divides the territorial legal and political jurisdiction a state has in relation to the others, a border or frontier is the area, region or zone having both length and breadth indicating, without necessarily fixing, the exact limits where one state starts and another ends.⁶ Although it may appear at first glance a conceptual difference, the distinction between boundary and border is of particular importance in Africa. Therefore, any dispute in relation to the entitlement of a boundary or border is necessarily territorial.

In broad terms, borders in pre-European Africa⁷ were either: a) a frontier of contact for circumstances where different cultural and political communities lived and operated side by side; b) frontier of separation or a buffer zone over which neither side claimed or exercised any authority—e.g. forests and deserts usually provided natural frontiers in Central Sudan including Bornu, Maradi, Air and the

5 For a brief, yet informative account see Alan Day, ed., *Border and Territorial Disputes* (London: Longman, 1987), 95–96; David Downing, *An Atlas of Territorial Border Disputes* (London: New English Library Limited, 1980), 58. For a complete and updated detail of territorial disputes in Africa see CIA’s Factbook (country by country) available at https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_afr.html accessed 06/August/2019.

6 Adekunle Ajala, “The Nature of African Boundaries,” *Africa Spectrum* 18:2 (1983): 177–189.

7 Ian Brownlie, *African Boundaries: A Legal and Diplomatic Encyclopedia* (London: C. Hurst & Company, 1979); Catherine Hoskyns, ed., *The Ethiopian-Somalia-Kenya Dispute* (London: Oxford University Press, 1988); A.C. McEwen, *The International Boundaries of East Africa* (New York: Oxford University Press, 1971); Saadia Touval, *The Boundary Politics of Independent Africa* (Cambridge: Harvard University Press, 1972); Saadia Touval, *Somali Nationalism* (Cambridge: Harvard University Press, 1963).

Fulani Empire; c) over-lapping frontiers where different communities share the territory mainly as enclaves.

Territorial disputes in Africa are a product of imperialism and colonialism. European colonial powers fixed arbitrarily African boundaries within and outside of the Berlin Conference of 1885 (the Berlin Conference opened in November 1884 and lasted until February 1885).⁸ Territories were “constructed” based on European political considerations, and usually without regard to tribal and ethnological factors or knowledge about the socio-cultural characteristics of the continent.⁹ Unsurprisingly, African boundaries resulted in grouping together different ethnic groups in one state, cutting across many ethnic or nationally defined communities, or creating states with vulnerable social and economic stability because of its characteristics in terms of territory and population. Since then, communities, governments and leaders in Africa have had to face the effects of these arbitrary decisions.

Indeed, there are often at least two versions of the story. Africa’s colonial past is not an exception. On the one hand, the research in legal and political sciences, sociology, history and many other disciplines directly link the way in which Africa was “apportioned” by European empires at the time (mainly but not only, the British and French empires) with the current struggles in most parts of the continent.¹⁰ On the other hand, scientific literature assesses the same facts under a very different light by either negating the European responsibility in relation to the African experience or highlighting the good intentions behind the partition and some positive results.¹¹

Current territorial disputes

The current territorial disputes in Africa are either a) international differences, between African and non-African parties; or b) regional differences, between African parties only.

The times of colonialism and Empire are long gone. Surprisingly, there are still some territorial disputes in Africa that involve non-regional parties—i.e., European states. Somehow, former colonial powers have still presence in Africa and dictate directly or indirectly the internal and international agenda in what geographically is a different continent, and legally and politically, a different entity. Currently,

8 E. E. Aloba, Miebaka Niebebu and Ekong Sampson, “Uncovering the Bond between Colonialism and Conflict: Perspective of the Causes, Cases and Consequences of Territorial Disputes in Africa,” *International Journal of Innovative Research and Development* 7:1 (2018): 72–81.

9 J. Barron Boyd, “African Boundary Conflict: An Empirical Study,” *African Studies Review* 22:3 (1979): 1–14.

10 Frederick Cooper, “Decolonization and Citizenship Africa between Empires and a World of Nations,” in Els Bogaerts and Remco Raben, eds., *Beyond Empire and Nation: The Decolonization of African and Asian Societies, 1930s–1970s* (Leiden: Brill, 2012).

11 Saadia Touval, “Africa’s Frontier: Relations to a Colonial Legacy,” *International Affairs* 42:4 (1966): 641–654.

France—e.g. Banc du Geyser, Basas da India, Europa island, Juan de Nova island, Glorioso islands, Spain—e.g. Ceuta, islas Chafarinas, Melilla, and the United Kingdom—e.g. pervasive direct or indirect interference in many African regimes and direct right-peopling in Chagos islands—have a presence in these disputes.

From African territories completely controlled from Paris, Madrid and London to more subtle situations in which local groups are financed by European capital, the interference is still ongoing in many places doing very little to secure peace and legal, political, social and financial stability. Interestingly, it is not strange, therefore, that these central states label African counterparts as pseudo-states or failed states and continue with their interference under the umbrella of humanitarian intervention, humanitarian aid and similar.

France

France, the Comoros and Madagascar claim the Banc du Geyser as part of their exclusive economic zone (EEZ). From the French point of view, it is part of the EEZ of Glorioso Islands and have constituted the 5th district of the French Southern and Antarctic Lands (TAAF) since February 2007. Madagascar announced its annexation in 1976. They have never had a permanent population.¹² For all the claiming parties, more than an ecological interest, the islands may offer economic gains because of the soil exploitation and potentially, oil fields existence. In fact, in 2011, the Organization of Emerging African States (OEAS) published a Memorandum on the Admission of the United Micronations Multi-Oceanic Archipelago (UMMOA) in which the parties expressly considered the environmental importance and the disputed status of Banc du Geyser.¹³

Similarly, Madagascar and France are in dispute over the Glorioso Islands. Madagascar obtained independence from France in 1960, and the Comoros achieved independence in 1975. However, France retained control over a number of small island territories in the Mozambique Channel—i.e. namely Bassas da India, Europa Island, the Glorioso Islands and Juan de Nova Islands. Whilst France bases its claim on first discovery and its history of occupation and administration, Madagascar claims sovereignty over the islands on the grounds of historic title and geographic proximity.¹⁴ Madagascar has sought support from the United Nations (UN) and the former Organization of Africa Unity (OAU).

12 Christian Bouchard and William Crumplin, “Two Face of France: France of the Indian Ocean/France in the Indian Ocean,” *Journal of the Indian Ocean Region* 7:2 (2011): 161–182; The World Factbook (pdf) available at http://www.rodaknet.com/cia_fa_ctbook_2014/geos/print/country/countrypdf_fs.pdf accessed 06/August/2019.

13 UMMOA Memorandum (2011) available at <http://ummoa.net/OEAS-UMMOA.pdf> accessed 06/August/2019.

14 For the author's view about the futility of these kinds of arguments, see Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

Importantly, being sovereign over the islands will enable them to claim maritime spaces, as France did, such as the Territorial Sea, EEZ and Continental Shelf.¹⁵

Spain

The Chafarinas Islands consist of three small islets—i.e. Isla del Congreso, Isla de Isabel II and Isla del Rey.¹⁶ There is a small Spanish garrison stationed on Isabel II. Spain occupied the Chafarinas Islands in 1848 under the principle of *terra nullius*. Originally, they served as a military stronghold and place of confinement. The various public works undertaken in Chafarinas brought civil population—e.g. fishermen and traders. Importantly, any decision in terms of the sovereignty over the Chafarinas may have an effect with regard to Ceuta and Melilla. Therefore, despite the territorial dispute, at cost and inconvenience, the island enclaves are maintained.

Both Morocco and Spain claim sovereignty over the five Territories of Ceuta, Melilla, Penon de Vélez de la Gomera, Peñón de Alhucémas and the Chafarinas Islands in North Africa. The most important of these is Ceuta which is located at the eastern entrance to the Strait of Gibraltar. In addition to the Spanish autonomous cities of Ceuta and Melilla, and the smaller presidios (Peñón de Vélez de la Gomera, Islas de Alhucemas and Islas de Chafarinas), Spain continues to have educational and economic presence in North Africa, especially in northern Morocco. The total area of the enclaves is 14 square miles. By comparison, Gibraltar is only 2.4 square miles. Ceuta is about nine square miles. Melilla is four square miles. The others are less than one square mile total.

Spain claims these territories on historical grounds: right of conquest and *terra nullius* principles; longevity of occupation, national security and the UN territorial integrity of the state principle. Spain stresses that the majority of residents there are Spanish and wish to remain under Spanish rule. Also, treaties were signed by Morocco in relation to the Sovereign Territories. In turn, Morocco argues that: the UN principles of decolonization must be applied; Spanish occupation

15 Elíseo Benedito Jamine, "Maritime Boundaries Delimitation, Management and Dispute Resolution (United Nations)," available at http://www.un.org/depts/los/nippn/unnff_programme_home/fellows_pages/fellows_papers/jamine_0607_mozambique.pdf accessed 15/August/2019; Overseas Countries and Territories: Environmental Profile, available at https://ec.europa.eu/europeaid/sites/devco/files/oct-s-environmental-profiles-indian-ocean-012015_en.pdf accessed 15/August/2019.

16 Jamie Trinidad, "An Evaluation of Morocco's Claim to Spain's Remaining Territories in Africa," *International and Comparative Law Quarterly* 61:4 (2012): 961–975; Anthony S. Reyner, "Morocco's International Boundaries: A Factual Background," *The Journal of Modern African Studies* 1:3 (1963): 313–326; Lotfi Sayahi, "España ante el Mundo: Spain's Colonial Language Policies in North Africa," in *Languages, Literatures and Cultures* (Scholars Archive, University at Albany, State University of New York, 2015), 3, available at https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1002&context=cas_llc_scholar accessed 15/August/2019; Francisco José Calderón Vázquez, "Boundaries in Time and Space: Spanish Minor Sovereign Territories," *Frontera Norte* 26:51 (2014): 113–136.

obstructs the economic and political independence of the kingdom; the Spanish bases threaten Moroccan national security; and the UN territorial integrity principle applies. Morocco stresses that Spanish arguments for the recovery of the British Crown Colony of Gibraltar substantiate Morocco's to the Plazas. Fundamentally, territorial disputes in the region are the legacy of the historical geopolitical organization of the area. Because of Spanish control of the Sovereign Territories, since 1986 the European Union has common boundaries with an Arab state. The Territories are also within the NATO defense area because of Spanish membership of the Alliance.

Meanwhile, Melilla is composed of a population representing 60% Peninsular origin and 40% Berber origin. The Berber language was the indigenous tongue of Morocco before the Arab conquest in Northern Africa toward the end of the seventh century, in 670. In contrast to Ceuta, Spanish is in contact more with Berber than with Arabic. Trilingualism, nevertheless, is common among those Berber descendants in Melilla who establish contact between the Spanish, Arabic and Berber languages. Similar to Ceuta, the Peninsular originating population remains monolingual, education is strictly in Spanish, and Berber does not have any official status.

Spain¹⁷ has experienced a sharp increase in the number of migrants and refugees arriving in the country over the last years, with 16,263 arriving in 2015; 14,094 in 2016; and 28,346 in 2017. They came from different countries, including Syria, North African countries, in particular Morocco and Algeria, as well as conflict-torn sub-Saharan countries. Migrants and refugees have reached Spain primarily by arriving by land or sea at either of the two autonomous cities of Melilla and Ceuta located in Northern Africa, or arriving by sea to mainland Spain. In the first half of 2018, the number of arrivals reached a total of 20,218.

United Kingdom

Britain had several colonies in Africa: in British West Africa there was Gambia, Ghana, Nigeria, Southern Cameroon and Sierra Leone; in British East Africa there was Kenya, Uganda and Tanzania (formerly Tanganyika and Zanzibar); and in British South Africa there was South Africa, Northern Rhodesia (Zambia), Southern Rhodesia (Zimbabwe), Nyasaland (Malawi), Lesotho, Botswana and Swaziland. Britain had a strange and unique colonial history with Egypt. The Sudan was jointly ruled by Egypt and Britain—i.e., condominium—because they had jointly colonized the area. The British employed various systems of governance in their African colonies. These

17 Gerry O' Reilly, "Boundary and Territory Briefing, Ceuta and the Spanish Sovereign Territories: Spanish and Moroccan Claims," International Boundaries Research Unit, Department of Geography, University of Durham, 1994, available at http://www.marineregions.org/documents/btb_1-2.pdf accessed 15/August/2019; Bryan Kirschen, "The (Not-So) Distant Relation between Spanish and Arabic," *Voices*, UCLA, 2:1 (2014): 5–12; Information Document (Migration and Refugees), available at <http://www.statewatch.org/news/2018/sep/coe-sr-migration-report-on-spain-mission-3-18.pdf> accessed 15/August/2019.

were through the agency of a) trading companies; b) indirect rule; c) the settler rule; and d) and condominium government.

An ongoing territorial dispute recently resolved involves the United Kingdom and Africa: the Chagos archipelago.¹⁸ The geographical location of the islands for the control of the south west Indian Ocean made them a target for European colonialism. In 2019, the International Court of Justice clearly stated the obligation the United Kingdom has to restitute the islands to Mauritius by ending its administration.¹⁹ Amongst several relevant legal concepts, the Advisory Opinion included self-determination, self-governing territory, territorial integrity, administering power and decolonization.

Regional differences between African parties only and further implications

Arguably, Africa is the region where territorial disputes show more evidently the negative synergy amongst different issues at stake. Moreover, all the contexts—i.e. domestic, regional and international—play a role in their initiation, continuation and lack of peaceful and permanent settlement.

For instance, natural resources are often one of the causes behind territorial disputes. In the case of Africa, it is relatively easy to determine the presence of local, regional and international interests. Intuitively, a territory with resources of any type may be more valuable than a territory without them. Resources represent wealth, and wealth can imply leader's prestige, political and military power, etc. Whether autocracies or democracies, all governments face similar incentives.²⁰ With an estimate of more than 600 million people, Africa's population growth rate is the highest in the world.²¹ Africa's population characteristics are tightly linked

18 Stephen Allen, *The Chagos Islanders and International Law* (Oxford: Hart Publishing, 2014); Garth Abraham, "Paradise Claimed: Disputed Sovereignty over the Chagos Archipelago," *South African Law Journal* 128:1 (2011): 63–99.

19 Stephen Allen, "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (I.C.J.)," *International Legal Materials* 58:3 (2019): 445–602; Laura Jeffrey, "The International Court of Justice: Advisory Opinion on the Chagos Archipelago," *Anthropology Today* 35:3 (2019): 24–27; Fernando Lusa Bordin, "Reckoning with British Colonialism: The Chagos Advisory Opinion," *The Cambridge Law Journal* 78:2 (2019): 253–257. See also the ICJ Advisory Opinion on 25/02/2019 available at <https://www.icj-cij.org/en/case/169> accessed 08/August/2019.

20 Christopher Macaulay and Paul R. Hensel, "Natural Resources and Territorial Conflict," Department of Political Science, University of North Texas, 2014, available at <http://www.paulhensel.org/Research/isa14.pdf> accessed 15/August/2019.

21 The Demographic Profile of African Countries, United Nations, Economic Commission for Africa, 2016, available at https://www.uneca.org/sites/default/files/PublicationFiles/demographic_profile_rev_april_25.pdf accessed 15/August/2019; Dilek Aykut and Monika Blaszkiewicz-Schwartzman, "Shaping the Future of Africa: Markets and Opportunities for Private Investors," International Finance Corporation, 2018, available at https://www.ifc.org/wps/wcm/connect/5c9e9f2f-779a-4ab7-beb6-e3aa65b00a85/Africa+CEO+Forum+Report_FIN3_Web-lores.pdf?MOD=AJPERES accessed 15/August/2019.

to natural resource conflicts. That is to say, although Africa is rich in natural resources there are significant challenges in terms of their management that might engender disputes and potential escalation into conflicts.²²

Natural resources conflict introduces many elements such as exploitation and exploration, ownership of the natural resources, ownership of the means for exploration and exploitation, distribution of revenues and others. Resource disputes in Africa happen on all scales, from the level of the individual—i.e. neighbours arguing over a hedge—to the level of the state—i.e. border overlapping a territory rich in any natural resource.²³

First, natural resources in Africa are often loaded with concepts of identity and ethnicity. Secondly, they depend on fluctuations in value or the interest of multinational corporations. Therein, natural resources *per se* are not the only issue behind the disputes but the ethnic differences between the claiming parties, power relations, historical background, etc. Additionally, the continuation of these domestic differences are important for some international agents and their agendas in relation to natural resources in Africa.²⁴ Furthermore, there is an issue mostly overlooked in Africa in terms of natural resources: maritime borders.²⁵ African states retained their inherited colonial boundaries. Consequently, issues regarding both maritime boundary delineation and management were largely a neglected part of this process.

In addition to natural resources, migration in Africa no matter its cause has an important impact on population dynamics.²⁶ Within the continent, migration has

22 Abiodun Alaw, *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (Rochester, NY: University of Rochester Press, 2007).

23 Oli Brown and Michael Keating, *Addressing Natural Resource Conflict: Working Towards a More Effective Resolution of National and Sub-National Resource Disputes* Chatham House, The Royal Institute of International Affairs, 2015 available at https://www.chathamhouse.org/sites/default/files/field/field_document/20150619AddressingConflictResourcesBrownKeating.pdf accessed 19/August/2019.

24 Robert I. Rotberg, ed., *China into Africa: Trade, Aid, and Influence* (Washington, D. C.: Brookings Institution Press, 2008); David H. Shim and Joshua Eisenman, *China and Africa: A Century of Engagement* (Philadelphia, PA: University of Pennsylvania Press, 2012); Young-Chan Kim, *China and Africa: A New Paradigm of Global Business* (Switzerland: Palgrave Macmillan, 2017); Maxim Matushevich, *Africa in Russia, Russia in Africa: Three Centuries of Encounters* (Trenton, NJ and Asmara: Africa World Press, 2007); Peter Duignan and L. H. Gann, *The United States and Africa: A History* (Cambridge: Cambridge University Press, 1987); and many others.

25 Timothy Walker, "Why Africa Must Resolve its Maritime Boundary Disputes," Institute for Security Studies Policy Brief 80, October 2015 available at <https://www.files.ethz.ch/isn/194507/PolBrief80.pdf> accessed 12/August/2019.

26 Isaac K. Nyamongo and Dennis K. Shilabukha, "State of Africa's Population 2017," Addis Ababa, Ethiopia: African Union, 2017, available at https://au.int/sites/default/files/newsevents/workingdocuments/32187-wd-state_of_africas_population_-_sa19093_-e.pdf accessed 19/August/2019.

had its negative social consequences. For example, in 2015, there was widespread xenophobic related violence in South Africa. In Africa, as a form of migration, conflict-induced or forced migration has increased in recent times.²⁷ Conflicts in places such as Syria, Libya, Mali, Democratic Republic of Congo, South Sudan and Central African Republic as well as the terrorism, extremism and radicalized groups in North and West Africa and the Middle East have contributed to increased and widespread forced displacement of persons. Africa is directly affected by this kind of forced migration—i.e. over 25% of the world's refugees reside in Africa. In the particular case of territorial disputes, the differences between Sudan/South Sudan, Eritrea/Ethiopia, Kenya/Uganda, Somalia and Ethiopia, Djibouti and Kenya, have resulted in forced migration. Unsurprisingly, this type of migration has its roots in the European colonialism.²⁸ The colonial era was designed to meet the labor demands and, therefore, the economic policies resulted in indigenous labor being forced to move within the continent and abroad.

From the above brief account, it should at least be arguable that there is a negative synergy amongst many issues at stake in Africa. There is a connection between current forced migrations, poverty, bordering tension, natural resources, the level of socio-economic development, political instability and the historical elements.²⁹ It is not that pre-colonial Africa did not have problems. Indeed, there were migrations, fights and struggle before the time of the European colonialism. However, the key difference in the post-colonial era is that currently agents alien to the continent have a central role in perpetuating and exacerbating these negative realities.

For example, taking into account the population densities and arbitrary colonial boundaries, there is a very small probability that any two randomly chosen individuals in a given African country would belong to the same ethnolinguistic group. This is relevant in terms of economic growth because ethno-linguistically heterogeneous countries tend to grow more slowly, as a result of weaker public sector performance. In addition to this issue, political institutions play a decisive role. That is to say, although in democracies, ethno-linguistic heterogeneity may not impact the overall growth, in dictatorships, the impact is important.³⁰

Combining natural resources, ethnographic differences, colonial past, artificially defined boundaries, growing nationalism, poverty, lack of opportunities,

27 International Migration Report 2017, United Nations, available at http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf accessed 19/08/2019; Conflict-Induced Migration in Africa, United Nations, available at http://www.un.org/en/africa/osaa/pdf/events/20151123/outcomereport_durban.pdf accessed 19/August/2019.

28 Economic Development in Africa Report 2018, UNCTAD, available at https://unctad.org/en/PublicationsLibrary/aldcafrica2018_en.pdf accessed 19/August/2019.

29 Amobi P. Chiamogu, Eugene Nweke and Cornelius Chukwudi, "Making Poverty a History in Africa: The Role of the G8," *International Journal of Sustainable Development and World Policy* 1:1 (2012): 29–59.

30 Benno Ndulu, "Challenges of African Growth: Opportunities, Constraints and Strategic Directions," The International Bank for Reconstruction and Development, The World Bank, 2007, available at http://siteresources.worldbank.org/AFRICAEXT/Resources/AFR_Growth_Advance_Edition.pdf accessed 19/August/2019.

corruption and other issues at stake it is not surprising that territorial disputes and conflicts are now arguably the single most important determinant of poverty in Africa. According to the International Institute for Strategic Studies (IISS), in 1999 Africa played host to more than half the world's conflicts, and amongst them, territorial conflicts have constant presence. The conflicts have contributed significantly, in a negative form, to the slow growth of the continent. For example, research shows that neighboring countries lose about 43% of GDP solely because of these conflicts.³¹

The Middle East

The differences between Iraq, Iran, Kuwait, Saudi Arabia and the other states in Middle East³² indicate that most of the territorial disputes in the Arabian or Persian Gulf date back to colonial times and the way in which the former colonial powers divided the "territory" that was once sociologically integrated. These differences show too that although the claiming parties achieve a settlement, domestic, regional and international issues at stake may still turn the situation volatile and regional guarantors are key in peacekeeping. Similar to the cases in Africa, Asia, and the Americas, former colonial powers left behind "artificially" created divisions in what used to be a "territory" sociologically defined. The succinct account below aims to show how European understanding in legal and political sciences is not sufficient to comprehend the complexity of these realities.

³¹ *Idem.*

³² Most of the region has historically been known as the Persian Gulf, named after the Persian Empire—i.e. present-day Iran. Since the 1960s, rivalry between Persians and Arabs, along with the growth of Arab nationalism and evolving Western political and economic interests, has prompted an increasing use of the term "Arabian Gulf," particularly when referring to the region's body of water. This section, therefore, adopts indistinctly the expressions "Middle East," "Persian Gulf" and "Arab Gulf." For a succinct and informative account see Alan Day, ed., *Border and Territorial Disputes* (London: Longman, 1987), 178–179; David Downing, *An Atlas of Territorial Border Disputes* (London: New English Library Limited, 1980), 40. For a more detailed analysis see Husain Albaharana, *The Arabian Gulf States* (Beirut: Librairie Du Liban, 1975); S. H. Amin, *International Legal Problems of the Gulf* (London: Middle East and North African Studies Press Limited, 1981); Yaacov Bar-Siman-Tov, *Linkage Politics in the Middle East* (Boulder: Westview, 1983); I. Fahmy, *Negotiating Peace in the Middle East* (London: Croom Helm, 1983); David Finne, *Shifting Lines in the Sand* (Cambridge: Harvard University Press, 1992); Hussein Hassouna, *The League of Arab States and Regional Disputes* (New York: Oceana Publications, Inc., 1975); J. B. Kelly, *Arabia, the Gulf and the West* (London: Weidenfeld and Nicholson, 1980); Bahgat Korany and Ali Hillal Dessouki, eds., *The Foreign Policies of Arab States* (Boulder: Westview, 1984); Itamar Rabinovich, *The War for Lebanon 1970–1985* (Ithaca: Cornell University Press, 1985); Rosmarie Zahlan, *The Making of the Modern Gulf States* (Boston: Unwin Hyman, 1989).

Background

Despite its geographical dimension and constricted area, the Persian Gulf presents existing or potential volatility. The smaller states of the gulf are particularly vulnerable, having limited indigenous populations and, in most cases, armed forces with little more than symbolic value to defend their countries against aggression. Their economies and oil industries depend on access to the sea. Disputes and conflicts with the larger gulf powers inevitably endanger their critical transportation links.

Unsurprisingly, territorial disputes in the Persian Gulf are a product of imperialism and colonialism. Territories were legally and politically defined based on European legal and political considerations, and usually without regard to tribal and ethnological factors. The boundaries of the modern Persian Gulf were the creation of European diplomats partitions among themselves with little regard for, or knowledge of socio-cultural characteristics of the region.

Before the oil era, these states made little effort to define legally and politically their territories. Members of Arab tribes were loyal to their tribe or shaykh and tended to move freely across the peninsula's desert areas according to their needs and those of their flocks. Official boundaries were not relevant, and the concept of allegiance to a distinct political unit was absent. Organized authority was defined based on their practical use, such as ports and oases.

From 1820 until its withdrawal in 1971, Britain was the dominant power in the Gulf. The delineation of borders began with the signing of the first oil concessions in the 1930s. The national boundaries were defined by the British, but many of these borders were never properly demarcated, leaving opportunities for contention, especially in areas of the most valuable oil deposits.³³ Like many other European powers—i.e. Portugal, France, etc.— Britain's initial interest in the Gulf region was driven by the development of trade and commercial interests. The nature of Britain's involvement began to change, however, after it consolidated and expanded its colonial holdings in India. By the late 1950s, British presence in the region was subject to growing criticism as Arab nationalist ideas grew in popularity throughout the Arab world. Although Kuwait became independent in 1961, Britain continued to dominate the Gulf for another decade until 1971 when it formally left the region and the other states on the Arab side of the Gulf received their independence.

Until 1971 British-led forces maintained peace and order in the gulf. After the withdrawal of these forces and officials, territorial claims and tribal animosities rose to the surface. The concept of the modern state—introduced into the gulf region

33 Abd al-Amir Muhammad Amin, *British Interests in the Persian Gulf* (Leiden: E. J. Brill, 1967); Khaldoun Hasan Al-Naqeeb, *Society and State in the Gulf and Arab Peninsula* (New York, London: Routledge, 1990); Lawrence G. Potter, ed., *The Persian Gulf in History* (New York: Palgrave Macmillan, 2010); J. B. Kelly, *Britain and the Persian Gulf, 1795–1880* (Oxford: Oxford University Press, 1968); Helen Chapin Metz, ed., *Persian Gulf States: Country Studies* (Federal Research Division, Library of the Congress, 1993).

by the European powers—and the sudden importance of boundaries to define ownership of oil deposits fuelled territorial disputes. Importantly, while Britain relinquished its direct political control over the region, it retained a great deal of influence and to this day political, economic and military links between Britain and the Gulf States remain strong.

More precisely, the emergence of the contemporary inter-state system in the Gulf, and of the antagonisms underlying it, can be seen as a product of the imposition of modern forms of state formation, and of the nationalist or revolutionary ideologies associated with it, upon the pre-existing mosaic of peoples, languages and beliefs in this area of West Asia. The initial territorial divisions were a result of imperial state formation from the fifteenth to the early twentieth centuries. The boundary between Safavis and Ottomans was the site of substantial wars in the sixteenth to eighteenth centuries but was gradually stabilized through treaties, beginning with that of Zuhab (Qasr-i Shirin) in 1639 and culminating in the Treaty of Erzurum of 1847, while that between the two encroaching modern empires, the Russian and the British, was gradually drawn from the late eighteenth century onwards: the Romanovs took Iranian territory in the Transcaucasus, while the British pushed against Iran's eastern frontier, through India (now Pakistan) and Afghanistan, and from the late nineteenth century also encroached on the Arab territories lying on the southern side of the Gulf.

Consequently, the dominant power in the Gulf was neither Arab nor Persian, but British, in formal control of Iraq and much of the Peninsula's coastline, from Kuwait to Aden. The strategic situation was, therefore, one in which Britain maintained its military and administrative dominance: local states, Iran included, conducted their relations largely with Britain. There was very little contact of substance between the regional states. Iran and Saudi Arabia formally recognized each other. At first, however, Iran refused to recognize Iraq, since Baghdad refused to provide suitable guarantees to Persians living in its territory. Where there was upheaval, nationalist and social, in these states it had little to do with other regional peoples, and much to do with external, imperial, domination.

From the perspective of the mid-1990s the Gulf would appear to be one of the potentially most unstable regions of the world, given the combination of economic resources, militarized tension and internal political instability.³⁴ Yet beyond this evident instability, it is worth examining in what the difficulties consist. As far as international questions are concerned, there are at least six areas of tension: territory, ethnic and religious minorities, oil, arms races, conflicts in foreign policy orientation, and interference in each other's internal affairs.

34 Fred Halliday, "Arabs and Persians beyond the Geopolitics of the Gulf," *Cahiers d'études Sur La Méditerranée Orientale et le Monde Turco-Iranien*, 22 (1996) available at <https://journals.openedition.org/cemoti/143> accessed 19/August/2019.

Challenges for the states of the Gulf Cooperation Council and recent developments

The Gulf Cooperation Council (GCC) countries—i.e. Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates—face challenges on both domestic and international levels. Domestically, demographic pressures and a crisis of the social model are exacerbated by the volatility of the very narrow natural resource-based and state-dominated economies. Internationally, the fall of the Baathist regime in Iraq has changed the security balance. Amidst reform efforts, an unpredictable Iranian foreign policy and a wave of Islamic fundamentalist terror activities pose additional challenges and are reinvigorating international attention.³⁵

Predictions on the sustainability of oil and gas reserves include a high degree of uncertainty about future discoveries, innovation in production technology and the structure of future demand. At present production rates, the Gulf's proven reserves are predicted to last for 100 years as opposed to 25 years for the rest of the world's proven oil. Research by the US Geological Survey estimates that with new discoveries and adding gas into the equation, the GCC countries will contribute 20% of the world's fossil fuel supplies, which would not be much more than Russian supplies. Yet other estimates solely based on oil predict that the Gulf will become an even more important supplier in the coming decades than it is now.

Regional security, or the lack thereof, remains the prevailing challenge facing the Middle East.³⁶ The withdrawal of the US from the JCPOA has increased the possibility of more violence and escalation. The different dynamics between Iran and the Gulf states show that ties across the Persian Gulf are opportunistic and constrained by limited economic integration, a long history of mutual suspicion and frustration with Saudi dominance on the part of the other GCC members. Without an overarching, unified GCC policy towards Tehran, bilateral military cooperation with the US has also helped the GCC countries carve out independent strategic relations with Iran. Similarly, fragmentation within the GCC has provided Iran with an opportunity to buffer against calls for its economic and political isolation. Iran's ties to the smaller Gulf countries have provided Tehran with limited economic, political and strategic opportunities for diversification that have simultaneously helped to buffer against sanctions and to weaken Riyadh. However, Tehran does recognize the limitations to its links in the Gulf. Above all, these relationships ultimately highlight internal GCC tensions, as acutely demonstrated by the Qatar crisis, and the constraints on Iran's Gulf policy.

35 Sanam Vakil, "Iran and the GCC: Hedging, Pragmatism and Opportunism," Chatham House, 2018, available at <https://www.chathamhouse.org/sites/default/files/publications/research/2018-09-13-iran-gcc-vakil.pdf> accessed 19/August/2019.

36 See, for example the discussions at NATO's Parliamentary Assembly (2012) available at <https://www.ft.dk/samling/2011/almedel/npa/bilag/26/1142441.pdf> accessed 19/August/2019.

The Persian Gulf with an area of approximately 90,000 square miles is underlain in its entirety by continental shelf. The Gulf is virtually an enclosed sea with the only opening being in the east through the Strait of Hormuz. Eight states border the Persian Gulf: Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Potentially, at least 16 continental shelf boundaries will be required in this region.³⁷ Seven boundaries have been negotiated: Bahrain-Iran; Bahrain-Saudi Arabia; Iran-Oman; Iran-Qatar; Iran-Saudi Arabia; Qatar-United Arab Emirates (Abu Dhabi); Iran-United Arab Emirates (Dubai). The other nine boundaries are: Bahrain-Qatar; Iran- Iraq; Iran- Kuwait; Iran-United Arab Emirates (two boundaries); Iraq-Kuwait; Kuwait-Saudi Arabia; Oman-United Arab Emirates; Qatar-Saudi Arabia.

The methods employed by these countries to delimit their offshore boundaries vary. The equidistance method has been used but not without modification due to special circumstances. In certain circumstances islands have been given special consideration. In some areas they have been completely disregarded, in some situations they have been given partial effect in the delimitation process. Outstanding sovereignty disputes will complicate many of the remaining boundary negotiations.

The Israel-Palestine difference

The longstanding and still unresolved territorial dispute between Israel and Palestine has several dimensions.³⁸ The current nomenclature in legal and political sciences used the term "territorial dispute." Yet, the Israel-Palestine difference is a clear example of an ongoing dispute that has to do with territory as well as population, government and law domestically, regionally and internationally.

Arguments about the rightful sovereign of Jerusalem and surrounding areas have been present for generations. Since Biblical times the region has been the center of disputes in relation to the rightful settlement of different populations—for example, Genesis 14: 18–20 in which Jerusalem (or Salem) already has enemies. The following paragraphs will introduce the historical background. To be more precise, although the Israel-Palestine difference has been present for generations, the paragraphs below center the attention only on the more recent history (since World War I) because it is only since then the State of Israel has been legally and politically recognized.

37 J. E. Peterson, "Sovereignty and Boundaries in the Gulf States: Settling the Peripheries," in Mehran Kamrava, ed., *International Politics of the Persian Gulf* (Syracuse: Syracuse University Press, 2011).

38 Fred Khouri, *The Arab-Israeli Dilemma* (Syracuse: Syracuse University Press, 1985); Walter Laquer and Barry Rubin, eds., *The Arab-Israeli Reader: A Documentary History of the Middle East Conflict* (New York: Penguin Books, 1984); William Quandt, *Peace Process: American Diplomacy and the Arab-Israeli Conflict since 1967* (Washington, DC: Brookings Institution, 1993); Mark Tessler, *A History of the Israeli-Palestinian Conflict* (Bloomington: Indiana University Press, 1994).

The dispute is between two nations: that is Israel (or the Jewish nation) and Palestine (or the Arab nation) and includes several issues at stake such as religion, ethnicity, minorities, leader's prestige, geostrategic location, to name just a few.³⁹ Historically, Zionism started as a movement in reaction to existent and growing nationalism in Europe that in many cases were anti-Semitic. Therefore, Israel's birth as an independent state was the result of the needs for a separate nation.

Jewish population moved to Palestine, a land that was already inhabited. However, the Zionist Movement decided to settle far from European nationalisms. In parallel, the Arab National Movement was born, originally to fight the Ottoman Empire and the colonial regimes. Unsurprisingly, since the end of World War I, there has been an ongoing tension between the Zionist and Palestinian movements over the rightful settlement over the same territory.

Both nations claim Jerusalem as their capital. Whilst Israel proclaims Jerusalem to be the "undivided, eternal capital" and maintains its primary governmental institutions there, the Palestine Liberation Organization (PLO) claims the eastern part of the city as the capital of the state of Palestine. Therein, the international community accepts the *de facto* Israeli jurisdiction over West Jerusalem. However, *de jure*, states recognizing Israel have not recognized Israeli sovereignty over either the western or eastern sector of Jerusalem⁴⁰ and there are no legal documents that settle the status of Jerusalem. For instance, the 1993 Israeli-Palestinian Declaration of Principle leaves the question about the legal status of Jerusalem unanswered.⁴¹ Recently, the tension between the two nations increased after Donald Trump's declaration of US recognition of Jerusalem as the capital of Israel.⁴² Indeed, although research shows that both parties may be willing to arrive

39 There are many academic and non-academic sources referred to the historical roots of the Israel-Palestine difference. For academic sources, in addition to the previous note, see in particular Abraham Bell and Eugene Kontorovich, "Palestine, Uti Possidetis Juris, and the Borders of Israel," *Arizona Law Review* 58:3 (2016): 633–692 and Talia Einhorn, "The Status of Judea and Samaria (The West Bank) and Gaza and the Settlements in International Law," *Jerusalem Centre for Public Affairs, Global Law Forum*, 7 (2014): 1–64 available at <https://jcpa.org/article/status-of-settlements-in-international-law/> accessed 23/March/2020. For a non-academic brief yet informative view see Uri Avnery, *Truth Against Truth: A Completely Different Look at the Israeli-Palestinian Conflict* (Tel Aviv: Gush Shalom, 2010), available at <http://zope.gush-shalom.org/home/en/channels/downloads/truth/Truth%20Against%20Truth%20-%20English%20covered%20August/2019>.

40 John Quigley, "Sovereignty in Jerusalem," *Catholic University Law Review* 45:3 (1996): 765–780.

41 "History and politics of Jerusalem (2017)," Briefing by BICOM (British Israel Communications and Research Centre), available at <http://www.bicom.org.uk/wp-content/uploads/2017/05/Jerusalem-factsheet-19-May-with-map-1.pdf> accessed 20/August/2019.

42 "Donald Trump's Generous Offer on Jerusalem," *Editorial, Jerusalem Quarterly* 72 (2017): 3–6, available at <http://www.palestine-studies.org/sites/default/files/jq-articles/JQ%2072%20-%20Full%20Issue%20with%20Covers.pdf> accessed 20/August/2019.

to a compromise over other areas, the question about Jerusalem seems to be irreconcilable⁴³ and non-negotiable.⁴⁴

A general approach previously used in the Middle East region (and in many others around the world by former colonial powers imposing them to former colonies) has to do with partition solutions. They work under the assumption that the hostilities between opposing ethnic groups makes it impossible for them to live peacefully together in a single state. Purely in terms of territory, Israel and Palestine argue over the ones Israel conquered from Jordan in the 1967 war. These territories include the West Bank and East Jerusalem. Israel unilaterally withdrew from the Gaza Strip in 2005 and makes no sovereignty claim over this territory. In recent years, all the solutions explicitly or implicitly suggest partition: the “two-state solution” presented by President Bill Clinton during the Camp David Summit and Taba talks (2000); the “Roadmap to Peace” introduced by President George W. Bush (2003) and endorsed by the United States, the United Nations, the European Union and Russia; the UN Security Council Resolution 1397 (2002); the UN Security Council Resolution 1515 (2003); the Arab Peace Initiative, endorsed by the Arab League (2002 and 2007).⁴⁵ Despite these projects and national, regional and international interests, there are many reasons to disagree with the partition solution.⁴⁶

A Joint Poll⁴⁷ (published on 25 January 2018) conducted by the Tami Steinmetz Center for Peace Research (TSC), Tel Aviv University and the Palestinian Center for Policy and Survey Research (PSR) in Ramallah, with funding from the European Union (EU), the Netherlands Representative Office in Ramallah and the UNDP office on behalf of the Representative Office of Japan to Palestine showed the following results: support for the two-state solution stands at 46% among Palestinians and Israeli Jews. In June 2017, 53% of Palestinians and 47% of Israeli Jews supported that solution. Among Israeli Arabs, support for the two-state solution stands at 83%. Other solutions were considered but fewer people agreed: one state with equal rights, one state without rights and expulsion or “transfer.”

43 “Jerusalem: Some Aspects of a Complex Problem,” National Foreign Assessment Center, original: 1978, approved for release CIA historical collections division November 2013, available at <https://www.cia.gov/library/readingroom/docs/1978-05-01.pdf> accessed 20/August/2019.

44 Alan Baker, “Is Jerusalem Really Negotiable? An Analysis of Jerusalem’s Place in the Peace Process,” *Jewish Political Studies Review* 24:3/4 (2012): 72–95.

45 Oded Haklai and Neophytos Loizides, *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Stanford, California: Stanford University Press, 2015), in partic. 1–39, 192–208.

46 For an academic reference see David D. Laitin, “Ethnic Unmixing and Civil War,” *Security Studies* 13:4 (2004): 350–365; Nicholas Sambanis, “Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature,” *World Politics* 52:4 (2000): 437–483; Nicholas Sambanis and Jonah Schulhofer-Wohl, “What’s in a Line? Is Partition a Solution to Civil War?,” *International Security* 34:2 (2009): 82–118; and others.

47 Mode details about the Palestinian-Israeli Pulse: A Joint Poll (Poll Summary) available at <https://www.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-PSR-%20summaryreport.pdf> accessed 20/August/2019.

Interestingly, 40% of Palestinians and 35% of Israeli Jews support a permanent peace agreement package, along with 85% of Israeli Arabs.

An important point often overlooked in negotiations about sovereignty in cases of contested territories is “who counts?”⁴⁸ The answer to this seemingly simple question includes more societal groups for consideration than the only two apparent parties—i.e. Israelis and Palestinians. To be more precise, in the case of negotiations about the sovereignty over the disputed territories between Israel and Palestine there are 8,852,180 Israelis and 4,816,503 Palestinians (2,935,368 in the West Bank, 1,881,135 in the Gaza strip, 426, 533 in Jerusalem, and the rest in other areas). There are several political parties in Israel and in Palestine and, consequently, internal divisions are highly likely.⁴⁹

More precisely, in terms of population, it is possible to distinguish in the Israeli-Palestinian difference the following groups: people living in Israel (a *de jure* and *de facto* sovereign state); people living in Palestine (a *de facto* state); diaspora; refugees; and settlers in contested lands. In terms of people living in Israel, on Israel’s 70th birthday in April 2018, Israel’s population stood at 8,842,000. The Jewish population makes up 6,589,000 (74.5%); 1,849,000 (20.9%) are Arabs; and, those identified as “others” (non-Arab Christians, Baha’i, etc.) make up 4.6% of the population (404,000 people). In addition, there are approximately 169,000 people living in Israel who are neither citizens nor permanent residents. Out of the 14.3 million Jewish people in the world, 43% reside in Israel. Of Israeli Jews, 44% self-identify as secular, 11% simply as religious and 9% as ultra-Orthodox. According to the Israel Democracy Institute, the percentage of ultra-Orthodox is slightly higher.⁵⁰ In turn, people living in Palestine: 4,816,503 Palestinians (2,935,368 in the West Bank, 1,881,135 in the Gaza strip, 426, 533 in Jerusalem, and the rest in other areas).⁵¹

Independently of including them in any negotiation about sovereignty over the contested territories or not, three other terms referred to societal groups must be considered in the analysis of the Israel-Palestine difference: diaspora, refugees and settlers. Diaspora refers to the Jewish people living in different parts of the world

48 See the author’s view about this point in Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

49 For official statistics and information about population and political parties in Israel and Palestine see Israeli Central Bureau of Statistics (as 2017) available at http://www.cbs.gov.il/reader/cw_usr_view_Folder?ID=141; Palestinian Central Bureau of Statistics (as 2016) available at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/gover_e.htm; Israel: Political Parties available at <http://www.jewishvirtuallibrary.org/israeli-political-parties>; Palestine: Political Parties available at <http://www.midea.stweb.org/palestianparties.htm> all accessed 20/August/2019.

50 Latest population statistics for Israel available at <http://www.jewishvirtuallibrary.org/latest-population-statistics-for-israel> and People of Israel available at <http://embassies.gov.il/wellington/AboutIsrael/People/Pages/PEOPLE-Israel.aspx> both accessed 20/August/2019.

51 Palestinian Central Bureau of Statistics available at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/gover_e.htm accessed 20/August/2019.

outside Israel, or the various places outside Israel in which they live.⁵² Refugee⁵³ means a person who has escaped from their own country for political, religious, or economic reasons or because of a war. Palestinian refugees make up 42.8% of the Palestinian population in Palestine: 27.1% of them in the West Bank and 67.3% in Gaza Strip. The current population density is a serious concern in Gaza Strip reaching more than 4,500 inhabitants per one square kilometer.⁵⁴ Settler, instead, implies a political action involving the organized movement of a population belonging to one national group into another territory in order to create a permanent presence and influence patterns of sovereignty in the settled territory.⁵⁵ Therefore, the settlers purposely move to the territory under the sovereignty of another nation to “right-peopling” that territory. Regardless of the unified vision or the lack of a common policy, Jewish Israeli settlers in the West Bank constitute one of multiple actors.

Conclusion

This chapter examined territorial disputes in Africa and the Middle East. In all cases, the disputes include several issues at stake and the domestic, regional and international contexts. Indeed, territorial disputes are multilayer and multi-contextual. A recurrent theme amongst all these differences is the fact that these issues work together in negative synergy resulting in the origin and continuation of territorial disputes and their potential escalation into conflict.

In Africa, despite the long-ago end of colonial intervention, several territorial disputes still disrupt the continent sociologically, financially, legally and politically. On the one hand, arbitrary divisions by European colonial powers of sociologically and culturally defined societal groups into legally and politically defined states planted the seeds for conflict. On the other hand, some of these international agents are still present directly or indirectly, such as the United Kingdom, and new international actors such as the United States and China fuel domestic and regional rivalries cementing dysfunctional relationships between neighbor states.

52 Ancient Jewish History: The Diaspora available at <http://www.jewishvirtuallibrary.org/the-diaspora> and Jewish World Population per Country available at <http://www.jewishvirtuallibrary.org/jewish-population-of-the-world> accessed 20/August/2019.

53 Article 1A(2) of the *1951 Refugee Convention Relating to the Status of Refugees* says that a “refugee” is a person who: *owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or, who, not having a nationality and being outside the country of his former habitual residence...is unable or, owing to such fear, is unwilling to return to it.*

54 UNFPA (Palestine) available at <http://palestine.unfpa.org/en/population-matters-0> and Palestinian Central Bureau of Statistics available at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/Refugees%20e%20s.htm both accessed 20/August/2019.

55 Oded Haklai and Neophytos Loizides, *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Stanford, California: Stanford University Press, 2015).

The Middle East, in turn, shows a similar approach in terms of European manipulation in law and politics of societies that were defined sociologically and culturally before their intromission in the domestic and regional spheres. Furthermore, the Israel-Palestine difference demonstrated how people can be another instrument in feeding conflict through right-peopling of the territory.

Both Africa and the Middle East include an array of cases that clearly indicate there are several issues at stake behind the initiation, continuation and potential escalation into conflict of territorial disputes. Moreover, these disputes have to be contextualized locally, regionally and internationally for a more accurate comprehension. It may be the case that a particular issue at stake is more central than others, or a context is more relevant than the rest with regard to their origin or pervasiveness. However, it is in the comprehensive understanding as multilayer and multi-contextual nature of territorial disputes that a path towards a better explanation of their complexity can be built. Therein, by gaining a better, more robust understanding of their complexity, it may be possible to reimagine in theory, and hopefully, in reality, a way towards solving them peacefully and permanently.

Bibliography

- Abraham, Garth. "Paradise Claimed: Disputed Sovereignty over the Chagos Archipelago." *South African Law Journal* 128:1 (2011): 63–99.
- Ajala, Adegunle. "The Nature of African Boundaries." *Africa Spectrum* 18:2 (1983): 177–189.
- Alaw, Abiodun. *Natural Resources and Conflict in Africa: The Tragedy of Endowment*. Rochester, NY: University of Rochester Press, 2007.
- Albaharana, Husain. *The Arabian Gulf States*. Beirut: Libraire Du Liban, 1975.
- Alchourrón, C. E. and Bulygin, E. *Normative Systems*. Library of Exact Philosophy: Springer-Verlag Wien. 1971.
- Allen, Stephen. "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (I.C.J.)." *International Legal Materials* 58:3 (2019): 445–602.
- Allen, Stephen. *The Chagos Islanders and International Law*. Oxford: Hart Publishing, 2014.
- Al-Naqeeb, Khaldoun Hasan. *Society and State in the Gulf and Arab Peninsula*. New York, London: Routledge, 1990.
- Alobo, E. E., Niebebu, Miebaka and Sampson, Ekong. "Uncovering the Bond between Colonialism and Conflict: Perspective of the Causes, Cases and Consequences of Territorial Disputes in Africa." *International Journal of Innovative Research and Development* 7:1 (2018): 72–81.
- Amin, Abd al-Amir Muhammad. *British Interests in the Persian Gulf*. Leiden: E. J. Brill, 1967.
- Amin, S. H. *International Legal Problems of the Gulf*. London: Middle East and North African Studies Press Limited, 1981.
- Avnery, Uri. *Truth Against Truth: A Completely Different Look at the Israeli-Palestinian Conflict*. Tel Aviv: Gush Shalom, 2010.
- Aykut, Dilek and Blaszkiewicz-Schwartzman, Monika. "Shaping the Future of Africa: Markets and Opportunities for Private Investors." International Finance Corporation, 2018.

- Baker, Alan. "Is Jerusalem Really Negotiable? An Analysis of Jerusalem's Place in the Peace Process." *Jewish Political Studies Review* 24:3/4 (2012): 72–95.
- Bar-Siman-Tov, Yaacov. *Linkage Politics in the Middle East*. Boulder: Westview, 1983.
- Bordin, Fernando Lusa. "Reckoning with British Colonialism: The Chagos Advisory Opinion." *The Cambridge Law Journal* 78:2 (2019): 253–257.
- Bouchard, Christian and Crumplin, William. "Two Face of France: France of the Indian Ocean/France in the Indian Ocean." *Journal of the Indian Ocean Region* 7:2 (2011): 161–182.
- Boyd, J. Barron. "African Boundary Conflict: An Empirical Study." *African Studies Review* 22:3 (1979): 1–14.
- Brown, Oli and Keating, Michael. "Addressing Natural Resource Conflict: Working Towards a More Effective Resolution of National and Sub-National Resource Disputes." Chatham House: The Royal Institute of International Affairs, 2015.
- Brownlie, Ian. *African Boundaries: A Legal and Diplomatic Encyclopedia*. London: C. Hurst & Company, 1979.
- Calderón Vázquez, Francisco José. "Boundaries in Time and Space: Spanish Minor Sovereign Territories." *Frontera Norte* 26:51 (2014): 113–136.
- Chiamogu, Amobi P., Nweke, Eugene and Chukwudi, Cornelius. "Making Poverty a History in Africa: The Role of the G8." *International Journal of Sustainable Development and World Policy* 1:1 (2012): 29–25.
- Cooper, Frederick. "Decolonization and Citizenship Africa between Empires and a World of Nations." In *Beyond Empire and Nation: The Decolonization of African and Asian Societies, 1930s-1970*, Bogaerts, Els and Raben, Remco, eds. Leiden: Brill, 2012.
- Day, Alan, ed. *Border and Territorial Disputes*. London: Longman, 1987.
- Downing, David. *An Atlas of Territorial Border Disputes*. London: New English Library Limited, 1980.
- Duignan, Peter and Gann, L. H. *The United States and Africa: A History*. Cambridge: Cambridge University Press, 1987.
- Fahmy, I. *Negotiating Peace in the Middle East*. London: Croom Helm, 1983.
- Finne, David. *Shifting Lines in the Sand*. Cambridge: Harvard University Press, 1992.
- Haklai, Oded and Loizides, Neophytos. *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts*. Stanford, California: Stanford University Press, 2015.
- Halliday, Fred. "Arabs and Persians beyond the Geopolitics of the Gulf." *Cahiers d'études Sur La Méditerranée Orientale et le Monde Turco-Iranien*, 22 (1996).
- Hassouna, Hussein. *The League of Arab States and Regional Disputes*. New York: Oceana Publications, Inc., 1975.
- Hoskyns, Catherine, ed. *The Ethiopian-Somalia-Kenya Dispute*. London: Oxford University Press, 1988.
- Huth, Paul K. *Standing Your Ground. Territorial Disputes and International Conflict*. Michigan: The University of Michigan Press, 2001.
- Jeffrey, Laura. "The International Court of Justice: Advisory Opinion on the Chagos Archipelago." *Anthropology Today* 35:3 (2019): 24–27.
- Kelly, J. B. *Britain and the Persian Gulf, 1795–1880*. Oxford: Oxford University Press, 1968.
- Kelly, J. B. *Arabia, the Gulf and the West*. London: Weidenfeld and Nicholson, 1980.
- Khouri, Fred. *The Arab-Israeli Dilemma*. Syracuse: Syracuse University Press, 1985.
- Kim, Young-Chan. *China and Africa: A New Paradigm of Global Business*. Switzerland: Palgrave Macmillan, 2017.

- Kirschen, Bryan. "The (Not-So) Distant Relation between Spanish and Arabic." *Voices*, UCLA, 2:1 (2014): 5–12.
- Korany, Bahgat, and Dessouki, Ali Hilla, eds. *The Foreign Policies of Arab States*. Boulder: Westview, 1984.
- Laitin, David D. "Ethnic Unmixing and Civil War." *Security Studies* 13:4 (2004): 350–365.
- Laquer, Walter and Rubin, Barry, eds. *The Arab-Israeli Reader: A Documentary History of the Middle East Conflict*. New York: Penguin Books, 1984.
- Macaulay, Christopher and Hensel, Paul R. "Natural Resources and Territorial Conflict." Department of Political Science, University of North Texas, 2014.
- Matusevich, Maxim. *Africa in Russia, Russia in Africa: Three Centuries of Encounters*. Trenton, NJ and Asmara: Africa World Press, 2007.
- McEwen, A.C. *The International Boundaries of East Africa*. New York: Oxford University Press, 1971.
- Metz, Helen Chapin, ed. *Persian Gulf States: Country Studies*. Federal Research Division: Library of the Congress, 1993.
- Ndulu, Benno. "Challenges of African Growth: Opportunities, Constraints and Strategic Directions." The International Bank for Reconstruction and Development, The World Bank, 2007.
- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor and Francis Group, 2017.
- Nyamongo, Isaac K. and Shilabukha, Dennis K. *State of Africa's Population 2017*. Addis Ababa, Ethiopia: African Union, 2017.
- O' Reilly, Gerry. "Boundary and Territory Briefing, Ceuta and the Spanish Sovereign Territories: Spanish and Moroccan Claims." International Boundaries Research Unit, Department of Geography, University of Durham, 1994.
- Peterson, J. E. "Sovereignty and Boundaries in the Gulf States: Settling the Peripheries." In *International Politics of the Persian Gulf*, Kamrava, Mehran, ed. Syracuse: Syracuse University Press, 2011.
- Potter, Lawrence G., ed. *The Persian Gulf in History*, New York: Palgrave Macmillan, 2010.
- Quandt, William. *Peace Process: American Diplomacy and the Arab-Israeli Conflict since 1967*. Washington, DC: Brookings Institution, 1993.
- Quigley, John. "Sovereignty in Jerusalem." *Catholic University Law Review* 45:3 (1996): 765–780.
- Rabinovich, Itamar. *The War for Lebanon 1970–1985*. Ithaca: Cornell University Press, 1985.
- Reyner, Anthony S. "Morocco's International Boundaries: A Factual Background." *The Journal of Modern African Studies* 1:3 (1963): 313–326.
- Rotberg, Robert I., ed. *China into Africa: Trade, Aid, and Influence*. Washington, D.C.: Brookings Institution Press, 2008.
- Sambanis, Nicholas and Schulhofer-Wohl, Jonah. "What's in a Line? Is Partition a Solution to Civil War?" *International Security* 34:2 (2009): 82–118.
- Sambanis, Nicholas. "Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature." *World Politics* 52:4 (2000): 437–483.
- Sayahi, Lotfi. "España ante el Mundo: Spain's Colonial Language Policies in North Africa." Languages, Literatures and Cultures, Scholars Archive, University at Albany, State University of New York, 2015.

- Shim, David H. and Eisenman, Joshua. *China and Africa: A Century of Engagement*. Philadelphia, PA: University of Pennsylvania Press, 2012.
- Simmons, A. John. "Ideal and Nonideal Theory." *Philosophy and Public Affairs* 38:1 (2010): 5–36.
- Tessler, Mark. *A History of the Israeli-Palestinian Conflict*. Bloomington: Indiana University Press, 1994.
- Touval, Saadia. "Africa's Frontier: Relations to a Colonial Legacy." *International Affairs* 42:4 (1966): 641–654.
- Touval, Saadia. *Somali Nationalism*. Cambridge: Harvard University Press, 1963.
- Touval, Saadia. *The Boundary Politics of Independent Africa*. Cambridge: Harvard University Press, 1972.
- Trinidad, Jamie. "An Evaluation of Morocco's Claim to Spain's Remaining Territories in Africa." *International and Comparative Law Quarterly* 61:4 (2012): 961–975.
- Vakil, Sanam. "Iran and the GCC: Hedging, Pragmatism and Opportunism." Chatham House, 2018.
- Walker, Timothy. "Why Africa Must Resolve its Maritime Boundary Disputes." Institute for Security Studies Policy Brief 80, October 2015.
- Zahlan, Rosmarie. *The Making of the Modern Gulf States*. Boston: Unwin Hyman, 1989.

9 Conclusive remarks, limitations and future implications

Introduction

This book is one of several steps in order to assess and potentially find viable ways to solve territorial disputes. The first step,¹ presented sovereignty conflicts as a matter of ideal theory and, therefore, did not consider real implications in territorial disputes. These pages aimed to continue the path by exploring some factual and logical, ideal and non-ideal features in ongoing territorial disputes around the world.² This time, together with conceptual elements, many current territorial disputes were introduced to compare and contrast some differences and find some common, arguably constant, features. Therein, whilst the monograph offers an understanding of the dynamics of territorial disputes, it also helps contribute to international law and politics by developing a more integrated approach to theory building.

These chapters had two simple yet fundamental premises. First, a comprehensive and more robust understanding of international conflict requires a global and inter-disciplinary assessment. Secondly, integrated and useful theories of international law and politics must agree on a common set of key conceptual elements for the evaluation of territorial disputes if they aim to integrate their findings in order to explore potential permanent and peaceful means to settle them.

Chapter 1 introduced the core conceptual and methodological elements and the overall structure. Some constant features in all territorial disputes were highlighted: ongoing and pervasive nature of territorial disputes and sovereignty conflicts, their multi-layered nature and the lack of common scientific ground to assess them and, therefore, to solve them. Chapter 2 examined the concept of “state.” By introducing its basic components—i.e. population, territory, government (or government and law)—and a sample of theories in legal and political sciences that refer to the state it resulted more evident that different theories and bodies of literature refer to the same concept but give pre-eminence to one or some of its

1 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

2 For the difference in law between empirical and logical issues and in political science between ideal and non-ideal theory see chapter 8, fn. 3.

elements in their analysis. Therein, despite these theories and bodies of literature refer to the same concept—i.e. state—and the same elements—i.e. population, territory and government (or government and law)—legal and political sciences offer different conceptions based on the element (or sub-element) of analysis. Therein, disagreements are apparent and not intrinsic to the concept of state itself but to the views related to the concept (or real phenomena behind this concept). These views are based on hermeneutical and evaluative elements than can easily be agreed between different disciplines in order to have conceptual or substantive results (or both) that can further the study of the state. In turn, Chapter 3 introduced the concepts of sovereignty and self-determination. The purpose of the assessment was to demonstrate that sovereignty and self-determination are inclusive and that by shifting the focus from territory to people territorial disputes might find a solution. If the assessment of territorial disputes can center on elements other than territory, sovereignty can be shared in a way in which is beneficial to all the claiming agents, and self-determination may lead to solutions different from secession, there is room for territorial disputes to be resolved by cooperative approaches.

Chapter 4 presented territorial disputes, different kinds of claims, issues at stake and the different contexts at play—i.e. domestic, regional and international. Indeed, territorial disputes are multi-faceted and multi-level. Therefore, to leave aside elements on their evaluation is to risk a partial understanding of a complex situation. To be more precise, the challenger and the challenged agents in a territorial dispute may use any kind of claim—i.e. colorable claim—that may be the same, but not necessarily, for their initiation, continuation and escalation into conflict or a peaceful and permanent settlement. In addition to this, the same ground for any claim may be valued differently. Consequently, a comprehensive and more appropriate evaluation of territorial disputes should accept a variety of issues at stake and should include the domestic, regional as well as international contexts.

Currently, there are many remedies to settle permanently and peacefully territorial disputes. Chapter 5 presented rules and methods such as negotiation, mediation, inquiry, conciliation, arbitration and regional and international institutions and organizations such as the United Nations, the International Court of Justice, the Organization of American States, the Arab League, to name only a few. Despite the myriad of procedures and institutions, parties in a dispute do not use them or seek their assistance to solve their differences. Consequently, this chapter introduced a set of pre-requisites that should be taken into account before any procedure for dispute settlement is chosen. Thereafter, the final paragraphs included the egalitarian-shared sovereignty as a way to deal with the multi-level and multi-faceted quality of these disputes that, at least in theory, no reasonable party may reject.

Chapters 6, 7 and 8 included references to a sample of ongoing territorial disputes around the world. Chapter 6, with the Americas, introduced the common roots in all cases: the historical component based on colonial times. Thereafter, three main thematic areas and some controversial examples in each occasion were

reviewed: the cases that included a participant in the dispute outside the American continent; the neo-colonial interference of the United States in other states; and the ongoing territorial disputes between states in the region. Some partial conclusions indicate that any population in a disputed territory, whether implanted for “right-peopling” reasons or indigenous, may pose a different interest to the ones represented by the claimant sovereign states. Chapter 7, with Europe and Asia, focused the analysis on two main facets. With the European cases, the emphasis was given to the sociological components whilst the Asian selected examples highlighted the interconnections the domestic, regional and international contexts have. Also, this chapter shifted from the ideal view of a unique “state plan of life” to the acknowledgment that real case scenarios will include a variety of individual and collective interests that may have (but do not need to have) different views about justice and the dispute itself. Finally, Chapter 8, with territorial disputes in Africa and Middle East, brought all the aforementioned theoretical background briefly together. That is to say, all disputes include several issues at stake and the domestic, regional and international contexts have a degree of influence. Indeed, territorial disputes are multilayer and multi-contextual. Moreover, it highlighted the fact that people can be another instrument in feeding conflict through right-peopling of the territory.

These chapters show that it is in the comprehensive understanding as multilayer and multi-contextual nature of territorial disputes that a path towards a better explanation of their complexity can be built. For instance, civil societies may include internal divisions based on history, ethnicity, religion, etc. that can have an impact in the way these different groups perceive the dispute and their role as a political community in them. Secondly, governments and leaders may opt to keep the difference in a political and legal *status quo* because of the higher pay-off to their prestige and power (rather than a definitive and peaceful solution). Furthermore, together with local and regional actors, there are other international agents (not necessarily regional ones) that have a direct interest in these areas and, consequently, the way in which the dispute develops depending on their own interests and their alliances with any of the original local and regional claimants.

It should be evident by now that these claims, issues at stake and contexts work together in negative synergy resulting in the origin and continuation of territorial disputes and their potential escalation into conflict. Ergo, these disputes have to be comprehended in light of their complexity. That is to say, any study should firstly acknowledge the different claims by the different claiming parties, the different evaluation of these claims by each of these parties and the fact that each claiming party will present different subgroups, interests and views within. Secondly, it should accept their complex nature because of the several issues at stake. Finally, it should contextualize the dispute locally, regionally and internationally for a more accurate comprehension. Therein, by gaining a better, more robust, exhaustive and accurate understanding of their intricacy, it may be possible to reimagine in theory, and hopefully, in reality, a way towards solving them peacefully and permanently.

Some final remarks: partial conclusions and guidelines

This chapter brings together the main points of this monograph, highlights its explanatory importance in law and political science, and shows possible further implications. The value of these implications is twofold: the many connections at theoretical level different territorial disputes present and some guidelines for policymaking. Although there is only a brief presentation of the each individual territorial dispute, it is possible to draw some partial conclusions:

- To agree about the historical chronology is relevant but not conclusive to solve a dispute or a conflict.
- To discern initiation and continuation of a dispute from their escalation into conflict.
- To differentiate historical, legal, political, etc. features from their evaluation.
- To distinguish historical facts from religious account.
- To recognize there are domestic, regional and international reasons for dispute and conflict.
- To assess territorial disputes as multi-level phenomena with different dimensions.
- To identify some common elements in theory all these disputes have.
- To evaluate by means of an abstract experiment how to solve the difference in order to avoid bias.
- People can be a means to claiming sovereignty over a territory.

In summation, theoretical frameworks provide the hermeneutical tools to generalize behavior in a clear, cohesive, and concise manner. They also enable subsequent studies to sharpen the focus and identify more clearly variables that in principle may appear to be particular to a certain dispute. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*³ introduced a theoretical experiment to assess disputes and conflicts under certain conditions that eliminated bias, at least in theory. Having in mind that theoretical experiment and its result—i.e. egalitarian shared sovereignty—combined with the previous chapters and the aforementioned partial conclusions it is possible to sketch some broad guidelines for dispute settlement and conflict resolution:

- 1 If existing conditions in terms of sovereignty continue, they will only perpetuate a *status quo* and therefore, a legal and political limbo securing only one result: a volatile area in many ways.
- 2 Any negotiation in relation to the sovereignty over disputed territories should distinguish between the admissibility stage and the stage in which the actual negotiations over sovereignty take place.

3 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

- 3 The grounds for the respective participation in the negotiations—i.e. admissibility stage—should be broadly interpreted as “colorable claims.”⁴
- 4 The “principle of just acquisition” or any other form of historical claim can be brought solely in the admissibility stage to demonstrate the legitimacy and legality in taking part in the negotiations about the sovereignty over the disputed territory. However, this kind of ground for the claim (or any other) does not guarantee the weight or relevance of the respective claim in the final agreement about the sovereignty over the disputed territory.⁵
- 5 All claiming parties with a colorable claim should participate in any negotiation regarding the sovereignty over the disputed territory and somehow acknowledge themselves their respective internal different views, in particular in case of internal social tension or division in relation to the territorial dispute in question. To be more precise, any internal division in terms of views or interests about the sovereignty over the disputed territory within any claiming party should be resolved solely by that claiming party and not be brought in the negotiations about the sovereignty of the disputed territory.
- 6 In order to secure a peaceful and definitive solution, the final agreement must be somehow beneficial to all the agents, must recognize (to an extent) their claims and the result must not be detrimental to any of the agents.
- 7 Unless agreed by the claiming parties themselves, and without any recourse to domination, sovereignty of the disputed territories should not be totally in the hands of only one of the claiming parties.
- 8 Unless otherwise agreed by the claiming parties themselves, and in order to neutralize any external influence or interest in the dispute or conflict, the United Nations or any other domestic, regional or international party alien to the dispute (for example, United States, United Kingdom, Russia, Arab League) should not interfere or take part in any form in any stage before, during or after the negotiations about the sovereignty of the disputed territory.
- 9 If a peaceful and permanent settlement is agreed amongst the claiming parties, regional guarantors may be considered relevant in peacekeeping. To that extent, all the claiming parties should agree on the nomination and selection of the guarantors, their rights and obligations, and any procedure or *ad hoc* institution that may be required.
- 10 Global justice should be brought solely to help understand if there is an option to peaceful and permanent settlement and not the other way around—i.e. not to use territorial disputes to solve global justice issues or any other differences of any kind between the claiming parties apart from the territorial dispute itself.⁶

4 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017), chapter 6.

5 Idem.

6 Idem. See also chapter 6 and the author's view in relation to Pogge's position.

The aforementioned points only intend to signpost the most salient and arguably useful guidelines in order to start negotiations regarding a territorial dispute. That is to say, in the case in which several claiming parties are in a *status quo* in terms of their arguments over the sovereignty in relation to the same territory and these parties are willing to leave behind self-serving interests in order to start discussions to break the deadlock they may find useful the guidance. That is because this basic guide guarantees all the claiming parties an equal footing in the decision making process throughout each step from the admissibility stage until the compliance with the final settlement. Furthermore, none of the points mentioned above prevent any of the claiming parties from leaving the negotiations at any point and, therein, their respective sovereignties or claims to the disputed territory are not compromised should a final agreement not be reached.

Limitations

Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* ⁷ acknowledged some limitations—i.e. it did not explore non-ideal issues that may undermine the actual applicability of the methodology proposed and its outcome; the extension of the model to other situations different from the ones considered; the actual continuity of the egalitarian shared sovereignty in the case it was accepted. This book went towards addressing these limitations to an extent. The introduction of several ongoing cases allows the testing of the non-ideal assumptions relevant to the initiation, continuation and potential escalation into conflict of these territorial disputes. From there, it was possible to draw some partial conclusions that may be useful to similar and other cases. Despite this initial positive note, it is true there is still much work to fully comprehend the complexity of these disputes and find a viable way to settle them peacefully and permanently. In that regard:

- 1 Future work in the field should incorporate a more detailed assessment of the different claims, issues at stake and contexts relevant to a single territorial dispute in order to gain a more complete, robust and accurate understanding.
- 2 Having developed a theoretical model,⁸ it would be important to test the model in a “real-world” setting. With the potential to eliminate those factors that make such disputes unresolvable such as partiality to one’s perspective, prejudice against others, a pre-conception of “right” (to name only a few), an empirical and multi-disciplinary study should examine whether this new model is both feasible and effective by applying it to a single territorial dispute.

⁷ Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

⁸ Idem.

In relation to the first point, although the previous chapters, in particular Chapters 6, 7 and 8, presented a sample of ongoing territorial disputes, there are many more differences around the world and even the ones that are explored here are very succinctly introduced this time. This is, however, the intention on this occasion: to introduce some of the most notorious and controversial current territorial disputes to show that despite their many particularities they share many common features—i.e. kinds of claims, issues at stake, contexts—that deserve and require further and detailed analysis in order to achieve a better understanding in each particular case and to construct a more informed, accurate and useful body of theory for peaceful dispute and conflict resolution.

Secondly, both Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*⁹ and this monograph offer a set of hermeneutical tools to explore and assess territorial disputes and sovereignty conflicts. This is a starting point and does not intend to be anything else. In that regard, these pages are limited by their own nature. However, it is in that limitation and in its acknowledgment that future research can blossom. The implications of finally agreeing on a limited yet comprehensive set of hermeneutical tools for analysis by different disciplines to be applied to the same phenomena—i.e. in this case, territorial disputes—can only be promising. Some of them, probably the most evident, are presented in the next section.

Different from Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹⁰ a purely theoretical monograph centered on ideal theory and therefore, without any consideration of non-ideal issues such as lack of compliance, these pages went towards incorporating real territorial disputes by referring to the grounds for their claims, issues at stake and contexts that play a part in them. In that vein, a main limitation in Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹¹ (and in any intellectual work purely based on ideal theory) was acknowledged and challenged. Consequently, this book adapted the ideal view of a unique “state plan of life” to the acknowledgment that real territorial disputes invariably present a variety of individual and collective interests that may result in perceiving and valuing the dispute differently. For instance, many of the territorial disputes included in Chapters 6, 7 and 8 showed that leaders, political parties and communities at large may have the same views about a particular territorial dispute but do not need to. In fact, some leaders will prioritize their own prestige over the peaceful and permanent settlement of the territorial dispute in question.

Ultimately, Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹² and this monograph are an attempt to build a body of theory that now includes some sample territorial disputes for its illustration. It is in

9 Jorge E. Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue* (London and New York: Routledge, Taylor and Francis Group, 2017).

10 Idem.

11 Idem.

12 Idem.

the empirical test of these theoretical means applied to any real territorial dispute where the methodology and the proposed solution can achieve a meaningful value. Until then, like any theoretical work in law, political science and international relations—i.e. in fact, any discipline—its value will remain in the intellectual speculation.

Implications

Regardless of their limitations, Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹³ and these pages are original since the methodology proposed has never been used before in sovereignty conflict or dispute resolution. That is to say, the combination of a theoretical analysis in order to build up a body of tools for dispute and conflict resolution together with a multi-disciplinary approach that incorporates real case scenarios. In fact, even in theory the application of this methodology into sovereignty disputes remains exclusive to the author. It is important since, if successful, the parties will themselves arrive at a solution to the questions of territorial dispute and sovereignty. Additionally, if the model is successful in resolving any territorial dispute, it will enable its application into further research in other cases. This project is interdisciplinary in nature and therefore, significant and relevant in many fields such as law, political science, philosophy and international relations.

Indeed, it is as intriguing to the author as potentially important to the peoples involved in this kind of disputes to test the methodology of this novel theoretical model (distributive justice model for sovereignty dispute resolution) by using it to address any current sovereignty dispute in a peaceful and definitive way. Truly, the study aims to create a simple, high impact, solution to those key areas in conflict by engaging all the participants under conditions in which their pre-existing bias is neutralized—e.g. partiality to one's perspective, prejudice against others, a pre-conception of "right."

There are several other ways to deal with sovereignty conflicts in law, politics and international relations. These include independence, self-determination and free association, the just impartial observer—to name a few. Some of them have proven to be effective. However, for many reasons, these traditional remedies have proven to be futile or would not work in many ongoing cases. That is not to say that the methodology here is better than these traditional remedies or a "one fits all" solution. Contrary to these remedies, the current project assumes the parties want a peaceful solution that acknowledges—to an extent—their claims. So, solutions that imply ignoring claims, unfair policies, use of force or any action that may go against an otherwise peaceful understanding will be not viable.

This study is different from current models of sovereign dispute resolution in many ways. In brief, the main differences are: all the parties are included in the negotiations, all claims will be considered by the parties themselves, no party is allowed to take a stance in advance based on their origin, all the parties have to

13 Idem.

agree on the final decision. Unsurprisingly, it is a high-risk goal in the sense its final success cannot be guaranteed. That is mainly because the model aims to apply a methodology that has never been applied before into sovereignty conflicts in the real world.

The implications of such a view in relation to territorial disputes and sovereignty conflicts are many: participants work differently since all of the claiming agents would be invited to take part; they think differently since all their claims would be considered; they value sovereignty differently since the parties would have to come to an agreement as how to define and value “sovereignty”; they value their humanity differently since in order to take part in these negotiations the parties would have to acknowledge their mutual equal standing; they give up any use of force since the parties would have to agree before any negotiations that the final solution must be one that grants a final peaceful understanding they all accept; and, they neutralize nationalism. The latter is particularly important in sovereignty disputes because these are often highly emotional, with the participants taking the view that “victory for us is to see you suffer.”¹⁴

The next steps would be to apply the theoretical model to a territorial dispute. The analysis would take place in parallel in three locations: both claiming parties and the claimed territory. In brief, the community at large—e.g. politicians, academics, and public in general—in these three locations would be invited to take part in discussions about the sovereignty over the disputed territory under certain conditions. The main (not the only) condition to take part in the discussions would be for the discussants to act as if they did not know whom they represented. The reason behind this methodological decision is that in order to solve these kinds of disputes and conflicts the factors that cause bias should be neutralized—i.e. the participants would not be able to choose options purely because they are advantageous to those whom they represent or their origin.

In addition to this, there is a considerable amount of bibliography about territorial disputes and sovereignty conflicts as the previous chapters have made clear. However, there is no joint approach or multi-disciplinary study that includes all parties present in the same dispute or conflict. Therein, these studies are fragmented, and arguably incomplete, either because of its object of study or methodology

Broadly, the objectives of such a future study would be:

- 1 To produce a lexical, syntactic, and semantic description of the language being used by the three claiming parties when using the term “sovereignty” and variation between speakers and groups of speakers—i.e. that of politicians, academics, and public in general.
- 2 To evaluate whether there is a need to reconceptualize “territorial dispute” and “sovereignty conflict” to reflect the complexity of current differences and the difficulty of fitting them into existing categorizations (inter-state, intra-state).

14 Idem.

- 3 Conflict is usually viewed entirely in negative terms. To reflect on how conflict may be a positive mechanism for social change and may enable joint solutions.

The aforementioned objectives are based on some hypotheses that would be tested through future studies:

- 1 Politicians, academics and the public in general would display different linguistic features when referring to “sovereignty” and “sovereignty conflict” depending on country of origin and historical involvement in the conflict as well as personal and/or national agenda.
- 2 Territory, territorial dispute, sovereignty and sovereignty conflicts are defined by legal science, political science, international relations and many other sciences but also by non-rational factors such as emotion and passion.
- 3 By neutralizing non-rational factors that cause bias in sovereignty conflicts these conflicts may be resolved through a joint approach.

It is in the combination of these objectives and hypotheses that future research will find the continuation of its path towards the analysis and evaluation of individual territorial disputes with the final goal of building a body of theory applicable to peaceful dispute and conflict resolution. By coming up with an agreement on the methodology, the basic vocabulary and information that will be available to the representatives in the actual discussions, it will be up to the agents part in the respective territorial dispute to find the best solution feasible for them and their respective populations.

Conclusion

From the preceding pages, it is clear that some elements are constant or, arguably, more relevant to result in a territorial dispute than others. The examples go from strategic location and economic value of the territory to political unification and bordering minorities. As with any classification, these are claims and issues at stake considered in theory separated. In the real world, any given territorial dispute may be a combination of two or more of these elements. Cases such as the Falkland/Malvinas Islands and Gibraltar (despite their many particularities that make them different in many aspects) offer several theoretical similarities. It is relatively easy to observe in both cases strategic location and economic value of the territory argued by the United Kingdom, Argentina, Spain, the Falkland/Malvinas islanders and the Gibraltarians. Similarly, the cases of Kashmir and Northern Ireland, despite their many differences, share common theoretical elements helpful in order to better understand these disputes: political unification and bordering minorities. Consider the case of the Mexico-United States border and Crimea, for example. In principle, the former does not present a territorial dispute *per se* while the latter is a leading example of illegal occupation according to most of the international society. Yet, in both scenarios there are similar issues at stake such as leader's

prestige, immigration, bordering minorities and financial importance of the territory in question.

The domestic, regional and international contexts play each a part too. Prior gain of the territory, previous settlement, prior unresolved dispute, prior loss of territory and the decolonization norm are central to many territorial disputes in Central and South America, Africa, Central, East and South East Asia.

The solution to this kind of dispute seems to require a mutually exclusive relation amongst the claiming parties because it is assumed that the sovereignty over the disputed territories can be granted to only one of them. Indeed, for one understanding of sovereignty, this legal and political concept is absolute and, consequently, exclusive, and not shareable.

In all cases, although these territorial disputes and sovereignty conflict have been and are the object of study of many sciences—i.e. law, political science, international relations, to name only a few—these sciences do not share their developments. Moreover, these disciplines apply different methodological approaches, assumptions, views and conceptual basis. Indeed, although multi and interdisciplinary studies are promoted in academia everywhere around the world, it is more a nominal aim rather than an actual reality.

In brief, the answer for the unresolvable and pervasive nature of territorial disputes is very simple. Some problems are never solved because most people look for more problems or problems within a problem for many reasons (usually self-centered ones). Ergo, the answer is very simple: some problems like the many ongoing territorial disputes present in this monograph are never solved because people (or their representatives) do not look for a solution. Therein, it is in the attempt to explore these territorial disputes and dare to solve them at least in theory that these pages find their own worth. The hope is that in the future the methodology and solution suggested in Núñez, *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*¹⁵ and this monograph find their place among those who believe in leaving behind individualistic interests for the sake of global peace and growth.

Note: The bibliography in legal and political sciences that has to do with territorial disputes is either outdated or fragmented. The fragmentation is double because of the science and because of the object of study. The former, because the scientific assessment is limited to a particular field, for example either legal science or political science. The latter, because there is recent work on issues pertaining the world but based on particular regions or individual conflicts. The very few cases in which the author offers a global view the analysis is limited by the science of reference. In brief, there is a need for update and integration. As an example, Paul K. Huth, *Standing your Ground. Territorial Disputes and International Conflict* (Michigan: The University of Michigan Press, 2001) in his Chapter 1 offers a very comprehensive list of academic literature. In all cases, published before 2000 and in all cases fragmented by discipline and geographical location.

15 Idem.

Further reading

The author's previous work on state sovereignty and territorial disputes:

- Núñez, Jorge E. *Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue*. London and New York: Routledge, Taylor & Francis Group, 2017.
- Núñez, Jorge E. "A Solution to the Crimean Crisis: Egalitarian Shared Sovereignty applied to Russia, Ukraine, and Crimea." *Europe-Asia Studies* 69:8 (2017): 1163–1183.
- Núñez, Jorge E. "Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution." In *Selected Issues in Modern Jurisprudence*. Frenkel, David A. ed. Athens: ATINER, 2016.
- Núñez, Jorge E. "Sovereignty Conflicts as a Distributive Justice Issue: The Egalitarian Shared Sovereignty and a New Mode of Governance for Crimea." In *Legal Theory: Comprehension of Sovereignty in Russia, Western Europe, and the USA in the Conditions of Globalization*. Ivanovo: Ivanovo State University, 2015.
- Núñez, Jorge E. "Sovereignty Conflicts as a Distributive Justice Issue." In *Selected Issues in Public Private Law*. Frenkel, David A. ed. Athens: ATINER, 2015.
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Middle Ages." *International Journal for the Semiotics of Law* 28 (2015).
- Núñez, Jorge E. "About the Impossibility of Absolute State Sovereignty: The Early Years." *International Journal for the Semiotics of Law* 27 (2014).
- Núñez, Jorge Emilio. "The Origins of Sovereignty in the Hellenic World." In *International Law, Conventions and Justice*. Frenkel, David A. ed. Athens: ATINER, 2011.

Bibliography

In order to demonstrate the fragmentation (either by science or object of study) of current scholarly publication about territorial disputes, a sample bibliography follows below.¹⁶

Recent (in chronological order of publication)

- Shelef, Nadav G. *Homelands: Shifting Borders and Territorial Disputes*. Ithaca, NY: Cornell University Press, 2020.
- Yiallourides, Constantinos. *Maritime Disputes and International Law. Disputes Waters and Seabed Sources in Asia and Europe*. Abingdon and New York: Routledge, 2019.
- Plan, Brendan. *International Law and the Adjudication of Territorial Disputes*. Oxford: Oxford University Press, 2018.
- Kohen, Marcelo G. and Mamadou, Hébié, eds. *Research Handbook on Territorial Disputes in International Law*. Cheltenham, UK and Northampton, MA: Edward Elgar Publishing, 2018.
- Bell, Abraham and Kontorovich, Eugene. "Palestine, Uti Possidetis Juris, and the Borders of Israel." *Arizona Law Review* 58:3 (2016): 633–692.
- Einhorn, Talia. "The Status of Judea and Samaria (The West Bank) and Gaza and the Settlements in International Law." *Jerusalem Centre for Public Affairs, Global Law Forum* 7 (2014): 1–64.
- Guo, Rongxing. *Territorial Disputes and Conflict Management*. New York: Routledge, 2014.

¹⁶ For a more detailed bibliography in relation to each individual region, see the respective chapters in this monograph.

- Pinfari, Marco. *Peace Negotiations and Time: Deadline Diplomacy in Territorial Disputes*. New York: Routledge, 2012.
- Jeffrey, S. B. *Border Wars: Politics and Territorial Disputes*. Online: Webster's Digital Services, 2011.
- Kolers, Avery. *Land, Conflict, and Justice. A Political Theory of Territory*. Cambridge: Cambridge University Press, 2011.
- Wiegand, Krista Eileen. *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy and Settlements*. Athens, Georgia: University of Georgia Press, 2011.
- Guo, Rongxing. *Territorial Disputes and Resource Management: A Global Handbook*. London: Nova Science Publishers Inc., 2006.
- Tir, Jaroslav. *Redrawing the Map to Promote Peace: Territorial Dispute Management Via Territorial Changes*. Lanham: Lexington Books, 2006.
- Calvert, Peter. *Border and Territorial Disputes*. London: John Harper Publishing, 2004.

Global Sources (in alphabetical order)

- Allock, John, *et al.* *Border and Territorial Disputes*. London: Longman, 1992.
- Anderson, Ewan. *An Atlas of World Political Flashpoints*. London: Pinter Publishers, 1993.
- Brecher, Michael, *et al.* *Crises in the Twentieth Century*, Vol. 1. New York: Pergamon Press, 1988.
- Brogan, Patrick. *The Fighting Never Stopped*. New York: Vintage Books, 1990.
- Butterworth, Robert. *Managing Interstate Conflict, 1945–74: Data with Synopses*. Pittsburgh: University Center for International Studies, University of Pittsburgh, 1976.
- Central Intelligence Agency. *The World Factbook*. Washington, DC: Government Printing Office, ongoing.
- Day, Alan, ed. *Border and Territorial Disputes*. London: Longman, 1987.
- Downing, David. *An Atlas of Territorial Border Disputes*. London: New English Library Limited, 1980.
- Grundy-Warr, Carl, ed. *International Boundaries and Boundary Conflict Resolution*. Durham: International Boundaries Research Unit, University of Durham, 1990.
- James, Alan. *Peacekeeping in International Politics*. London: International Institute for Strategic Studies, 1990.
- Kacowicz, Arie. *Peaceful Territorial Change*. Columbia: University of South Carolina Press, 1994.
- Kratochwil, Friederich *et al.*, *Peace and Disputes Sovereignty: Reflections on Conflict over Territory*. Lanham, MD: University Press of America, 1985.
- Munro, David and Day, Alan. *A World Record of Major Conflict Areas*. London: Edward Arnold, 1990.
- Prescott, J. R. V. *Political Frontiers and Boundaries*. Boston: Allen & Unwin, 1987.
- Sharma, Surya. *International Boundary Disputes and International Law*. Bombay: N.M. Tripathi Private Limited, 1976.
- The Geographer. *International Boundary Study*. Washington, DC: Bureau of Intelligence and Research, Department of State, ongoing.
- Tillema, Herbert. *International Armed Conflict since 1945*. Boulder: Westview Press, 1991.
- United Nations. *Yearbook of the United Nations*. New York: United Nations, ongoing.

Central and South America (in alphabetical order)

- Beck, Peter. "Cooperative Confrontation in the Falkland Island Dispute." *Journal of Inter-American Studies and World Affairs* 24 (1982): 37–57.
- Beck, Peter. "Britain's Falkland Future-the Need to Look Back." *The Round Table* 73 (1984): 139–152.
- Beck, Peter. "The Future of the Falkland Islands: A Solution Made in Hong Kong?" *International Affairs, Royal Institute of International Affairs* 61 (1985): 643–660.
- Beck, Peter. "Looking at the Falkland Islands from Antarctica: the Broader Regional Perspective." *Polar Record* 30 (1994): 167–180.
- Beck, Peter. *The Falkland Islands as an International Problem*. London and New York: Routledge, 1998.
- Bender, Lynn. *Cuba vs. United States*. San Juan: Inter American University Press, 1981.
- Bianchi, William. *Belize: The Controversy between Guatemala and Great Britain over the Territory of British Honduras in Central America*. New York: Las Americas Publishing Co., 1959.
- Braveboy-Wagner, Jacqueline. *The Venezuela-Guyana Border Dispute*. Boulder: Westview Press, 1984.
- Bustamante, Fernando. "Ecuador: Putting an End to Ghosts of the Past?" *Journal of Inter-American Studies and World Affairs* 34 (1992–93): 195–224.
- Calvert, Peter. *Boundary Disputes in Latin America*. London: Institute for the Study of Conflict, 1983.
- Charlton, Michael. *The Little Platoon: Diplomacy and the Falklands Dispute*. New York: Blackwell, 1989.
- Child, Jack. *Geopolitics and Conflict in South America*. New York: Praeger, 1985.
- DeSoto, Anthony. *Bolivia's Right to an Access to the Sea*. Pasadena: Jensen Publishing Co., 1962.
- Farnsworth, David and McKenney, James. *U.S.-Panama Relations 1903–1978*. Boulder: Westview, 1983.
- Ireland, Gordon. *Boundaries, Possessions, and Conflicts in South America*. Cambridge: Harvard University Press, 1938.
- Jessup, Philip. "El Chamizal." *American Journal of International Law* 67 (1973): 423–445.
- Kinney, Douglas. *National Interest/National Honor: The Diplomacy of the Falklands Crisis*. New York: Praeger, 1989.
- Krieg, William. *Ecuadorean-Peruvian Rivalry in the Upper Amazon*. Bethesda, MD: William Krieg, 1986.
- LaFeber, Walter. *The Panama Canal*. New York: Oxford University Press, 1978.
- Lamborn, Alan and Mumme, Stephen. *Statecraft, Domestic Politics, and Foreign Policy Making: The El Chamizal Dispute*. Boulder: Westview Press, 1988.
- Lanus, Juan. *De Chapultepec al Beagle: Política Exterior Argentina*. Buenos Aires: Emecé Editores, 1984.
- Liss, Sheldon. *A Century of Disagreement*. Washington, DC: The University Press, 1965.
- Manfedo Jr., Fernando. "The Future of the Panama Canal." *Journal of Inter-American Studies and World Affairs* 35 (1993): 103–128.
- Moraga, Oscar. *El Precio de la Paz Chileno-Argentina*. Santiago: Editorial Nascimento, 1969.
- Osborne, Alfred. "On the Economic Cost to Panama of Negotiating a Peaceful Solution to the Panama Canal Question." *Journal of Inter-American Studies and World Affairs* 19 (1977): 509–521.

- Zammit, J. Ann. *The Belize Issue*. London: Latin American Bureau, 1978.
- Zook, David. *Zarumilla y Marañon: The Ecuador-Peru Dispute*. New York: Bookman Associates Inc., 1964.

Europe (in alphabetical order)

- Bahcheli, Tozun. *Greek-Turkish Relations since 1955*. Boulder: Westview Press, 1990.
- Ehrlich, Thomas. *Cyprus 1958–1967: International Crises and the Role of Law*. New York: Oxford University Press, 1974.
- Ertkien, N. M. *The Cyprus Dispute*. London: K. Rusten and Brother, 1981.
- Gold, Peter. “The Tripartite Forum of Dialogue: Is this the Solution to the ‘Problem’ of Gibraltar?” *Mediterranean Politics* 14 (2009): 79–97.
- Hills, George. *Rock of Contention, a History of Gibraltar*. London: Robert Hale & Company, 1974.
- Hitchens, Christopher. *Cyprus*. London: Quartet Books, 1984.
- Levie, Howard. *The Status of Gibraltar*. Boulder: Westview Press, 1983.
- Necatigil, Zaim. *The Cyprus Question and the Turkish Position in International Law*. New York: Oxford University Press, 1989.
- Polyviou, Polyvios. *Cyprus: Conflict and Negotiation 1960–1980*. London: Gerald Duckworth & Co. Ltd., 1980.

Middle East (in alphabetical order)

- Albaharana, Husain. *The Arabian Gulf States*. Beirut: Libraire Du Liban, 1975.
- Amin, S. H. *International Legal Problems of the Gulf*. London: Middle East and North African Studies Press Limited, 1981.
- Bar-Siman-Tov, Yaacov. *Linkage Politics in the Middle East*. Boulder: Westview, 1983.
- Fahmy, I. *Negotiating Peace in the Middle East*. London: Croom Helm, 1983.
- Finne, David. *Shifting Lines in the Sand*. Cambridge: Harvard University Press, 1992.
- Hassouna, Hussein. *The League of Arab States and Regional Disputes*. New York: Oceana Publications, Inc., 1975.
- Kelly, J. B. *Arabia, the Gulf and the West*. London: Weidenfeld and Nicholson, 1980.
- Khoury, Fred. *The Arab-Israeli Dilemma*. Syracuse: Syracuse University Press, 1985.
- Korany, Bahgat and Dessouki, Ali Hillal, eds. *The Foreign Policies of Arab States*. Boulder: Westview, 1984.
- Laquer, Walter and Rubin, Barry, eds. *The Arab-Israeli Reader: A Documentary History of the Middle East Conflict*. New York: Penguin Books, 1984.
- Quandt, William. *Peace Process: American Diplomacy and the Arab-Israeli Conflict since 1967*. Washington, DC: Brookings Institution, 1993.
- Rabinovich, Itamar. *The War for Lebanon 1970–1985*. Ithaca: Cornell University Press, 1985.
- Tessler, Mark. *A History of the Israeli-Palestinian Conflict*. Bloomington: Indiana University Press, 1994.
- Zahlan, Rosmarie. *The Making of the Modern Gulf States*. Boston: Unwin Hyman, 1989.

Africa (in alphabetical order)

- Brownlie, Ian. *African Boundaries: A Legal and Diplomatic Encyclopedia*. London: C. Hurst & Company, 1979.
- Hoskyns, Catherine, ed. *The Ethiopian-Somalia-Kenya Dispute*. London: Oxford University Press, 1988.
- McEwen, A. C. *The International Boundaries of East Africa*. New York: Oxford University Press, 1971.
- Touval, Saadia. *Somali Nationalism*. Cambridge: Harvard University Press, 1963.
- Touval, Saadia. *The Boundary Politics of Independent Africa*. Cambridge: Harvard University Press, 1972.

Asia (in alphabetical order)

- Barnett, A. Doak. *China and the Major Powers in East Asia*. Washington, DC: Brookings, 1977.
- Barry, M. "The Loss of Crimea, How Much Does Ukraine Lose, and How Much Does Russia Gain, a Computable General Equilibrium Model." *Journal of Global Peace and Conflict* 2 (2014).
- Bindra, S. S. *India and Her Neighbors*. New Delhi: Deep & Deep Publications, 1984.
- Bose, Sumantra. *The Challenge in Kashmir, Democracy, Self-determination and a Just Peace*. New Delhi: Sage Publications India Private. Ltd., 1997.
- Bradnock, Robert W. *Kashmir: Paths to Peace*. London: Chatham House, 2010.
- Burke-White, W. "Crimea and the International Legal Order." *Survival: Global Politics and Strategy* 56 (2014).
- Chawla, Sudershan. *The Foreign Relations of India*. Encino: Dickenson Publishing Co., 1976.
- Gelman, Harry. *Russo-Japanese Relations and the Future of the U.S.-Japanese Alliance*. Santa Monica, CA: RAND, 1993.
- Ginsburg, George and Pinckle, Carl. *The Sino-Soviet Territorial Dispute*. New York: Praeger, 1978.
- Gupta, Sisir. *Kashmir: A Study in India-Pakistan Relations*. Bombay: Asia Publishing House, 1966.
- Gurtov, Melvin and Hwang, Byoon-Moo. *China under Threat*. Baltimore: Johns Hopkins University Press, 1980.
- Heimsath, Charles. *A Diplomatic History of Modern India*. Bombay: Allied Publishers, 1971.
- Hellmann, Donald. *Japanese Foreign Policy and Domestic Politics*. Berkeley: University of California Press, 1969.
- Hoffmann, Steven. *India and China Crisis*. Berkeley: University of California Press, 1990.
- Jain, Rajendra. *China and Japan*. Oxford: M. Robertson, 1981.
- Jain, Rajendra. *The USSR and Japan*. Atlantic Highlands, NJ: Humanities Press, 1981.
- Jetly, Nancy. *India-China Relations 1947-1977*. New Delhi: Radiant Publishers, 1979.
- Jha, Prem Shankar. *Kashmir, 1947, Rival Versions of History*. Oxford: Oxford University Press, 1996.
- Jones, Peter. *China and the Soviet Union*. New York: Facts on File Publications, 1985.
- Kaplan, Stephen. *Diplomacy of Power*. Washington, DC: Brookings, 1981.
- Korbel, Josef. *Danger in Kashmir*. Princeton: Princeton University Press, 1954.
- Krishna, Rao. *The Sino-Indian Boundary Question and International Law*. New Delhi: Indian Society of International Law, 1963.

- Kuniholm, Bruce. *The Origins of the Cold War in the Near East*. Princeton: Princeton University Press, 1980.
- Maxwell, Neville. *India's China War*. New York: Pantheon Books, 1970.
- Mearsheimer, J. "Why the Ukraine Crisis is the West's Fault." *Foreign Affairs* 93 (2014).
- Molchanov, M. "Ukraine and the European Union: a Perennial Neighbour?" *Journal of European Integration* 26 (2004).
- Murty, T. S. *India-China Boundary: India's Options*. New Delhi: ABC Publishing House, 1987.
- Prakhar, Gulab Mishra. *Indo-Pakistan Relations*. New Delhi: Ashish Publishing House, 1987.
- Puri, Balraj. *Kashmir Towards Insurgency* (revised and updated). India: Orient Longman Ltd., 1995.
- Rai, Mridu. *Hindu Rulers, Muslim Subjects, Islam, Rights and the History of Kashmir*. London: C. Hurst & Co. Ltd., 2004.
- Rais, Rasul. *China and Pakistan*. Lahore: Progressive Publishers, 1977.
- Ray, Sunil Chandra. *Early History and Culture of Kashmir*. New Delhi: Munshiram Manoharlal Oriental Publishers, 1970.
- Rees, David. *Soviet Border Problems: China and Japan*. London: Institute for the Study of Conflict, 1982.
- Robertson, Myles. *Soviet Policy towards Japan*. Cambridge: Cambridge University Press, 1988.
- Roskin, M. "The New Cold War." *Parameters* 44 (2014).
- Rowland, John. *A History of Sino-Indian Relations*. Princeton: D. Van Nostrand Co., 1967.
- Sagar, Vidya. *India in World Affairs*. New Delhi: Swastik Prakashan, 1973.
- Schofield, Victoria. *Kashmir in Conflict, India, Pakistan and the Unfinished War*. London: I.B. Tauris & Co. Ltd., 2000.
- Sandhu, Bhim. *Unresolved Conflict: China and India*. New Delhi: Radiant Publishers, 1988.
- Shahi, Agha. *Pakistan's Security and Foreign Policy*. Zaildar Park: Progressive Publishers, 1988.
- Syed, Anwar. *China and Pakistan*. Amherst: University of Massachusetts Press, 1974.
- Tikoo, Ratna. *Indo-Pak Relations*. New Delhi: National, 1987.
- Wilson, H. H. *The Hindu History of Kashmir*. Calcutta: Susil Gupta Private Ltd., 1960.
- Whiting, Allen. *The Chinese Calculus of Deterrence*. Ann Arbor: University of Michigan Press, 1975.

Australia (in alphabetical order)

- Altman, Jon and Hinkson, Melinda, eds. *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*. Melbourne: Arena Publications, 2007.
- Engerman, Stanley L. and Metzger, Jacob, eds. *Land Rights, Ethno-Nationality, and Sovereignty in History*. London and New York: Routledge, 2004.
- Ferreira da Silva, Denise. *Towards a Global Idea of Race*. Minnesota: University of Minnesota Press, 2007.
- Ford, Lisa. *Settler Sovereignty. Jurisdiction and Indigenous People in America and Australia, 1788–1836*. Cambridge: Harvard University Press, 2010.
- Ghosh, Devleena et al. eds. *Water, Sovereignty and Borders in Asia and Oceania*. London and New York: Routledge, 2009.

- Haebich, Anna. *Spinning the Dream. Assimilation in Australia 1950–1970*. Australia: Fremantle Press, 2008.
- Kukutai, Tahu, ed. *Indigenous Data Sovereignty. Toward an Agenda*. Australia: The Australian National University, 2016.
- Moreton-Robinson, Aileen, ed. *Whitening Race: Essays in Social and Cultural Criticism*. Australia: Aboriginal Studies Press, 2004.
- Moreton-Robinson, Aileen. *Property, Power, and Indigenous Sovereignty*. Minnesota: University of Minnesota Press, 2015.
- Perera, Suvendrini, ed. *Our Patch: Enacting Australian Sovereignty post-2001*. Perth: Curtin University Press, 2007.

International conflict and war: (in alphabetical order)

- Goertz, Gary and Diehl, Paul. *Territorial Changes and International Conflict*. London: Routledge, 1992.
- Mandel, Robert. “Roots of the Modern Interstate Border Dispute.” *Journal of Conflict Resolution* 24:427 (1980).
- Midlarsky, Manus, ed. *Handbook of War Studies*. Boston: Unwin Hyman, 1989.
- Murphy, Alexander. “Historical Justification for Territorial Claims.” *Annals of the American Geographies* 80:531 (1990).
- Tetlock, Philip, *et al.* *Behavior, Society and Nuclear War*. New York: Oxford University Press, 1989.

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