TERRITORIAL SETTLEMENTS IN PEACE TREATIES

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I. INTRODUCTION

Wars are an inescapable aspect of human history. There are many reasons why states go to war, but traditionally one of the main reasons is territory – territory after all being one of the elements of what constitutes a “state” under international law.1 Conquest, which can be defined as “the act of defeating an opponent and occupying all or part if its territory,”2 does not however establish legal title to the territory by itself.3 Rather, after a successful war, the victor will occupy some or all of the defeated state’s territory. Belligerent occupation, however, is not the same as legal title.4 After the defeated state surrenders, the victorious army typically occupies the enemy’s territory while waiting for a territorial settlement in a peace treaty.5 The occupying power is entitled to usufruct, that is, the right to use and enjoy the land so long as the property is not damaged.6 Legal title passes from the defeated state to the victor by means of territorial provisions in a peace treaty.7

In classical international law, however, it was true that territory could be acquired solely by means of “annexation,” a legal fiction masking the actual conquest in order to pass title under international law.8 Examples of pure annexations from Europe include the gradual incorporation of the Papal States, Naples, Parma, Tuscany, Modena and others states to form part of the modern state of Italy – without a general war and without a territorial or peace treaty.9 However, in the aftermath of World War II, the Nuremberg War Crimes

1 1933 Montevideo Convention, article 1 (“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.”). See OPPENHEIM’S INTERNATIONAL LAW 563 (Robert Jennings and Arthur Watts eds., Longman 9th ed. 2008).
3 Id. See also OPPENHEIM’S INTERNATIONAL LAW, supra note 1, at 681-82; SHARON KORMAN, THE RIGHT OF CONQUEST: The acquisition of territory by force in international law and practice (Oxford University Press 1996).
5 Y. Frank Chiang, One-China Policy and Taiwan, 28 FORDHAM INTERNATIONAL LAW JOURNAL 1, 21 (2004).
6 Hague Convention Respecting The Laws and Customs of War on Land, with Annexed Regulations, Oct. 18, 1907, 36 Stat. 2277, § III, art. 55 (“The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”). See ALSO CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES, 51 (Jean-Marie Henckaerts et al. eds., Cambridge, 2009) (“The rule that immovable public property must be administered according to the rules of usufruct is a long-standing rule of customary international law already recognized in the Lieber Code, the Brussels Declaration and the Oxford Manual. It is codified in the Hague Regulations…”).
8 SHAW, supra note 2, at 501. See also OPPENHEIM’S INTERNATIONAL LAW, supra note 1, at 699; D. P. O’CONNELL, INTERNATIONAL LAW 431-36 (Stevens & Sons 1970).
9 Heinhard Steiger, Peace Treaties from Paris to Versailles, in PEACE TREATIES AND INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE 89 (Randall Lesaffer ed., Cambridge University Press 2004). Some parts of Italy however were ceded to Italy via peace treaties, such
Tribunal declared that annexations occurring before the end of a war were invalid and ineffective.\textsuperscript{10} In any event, the United Nations Charter now prohibits the threat or use of force by states in their international relations,\textsuperscript{11} rendering the acquisition of territory by conquest/annexation illegal under international law.

But even though territorial rearrangements in the past sometimes took place by annexation, peace treaties were nevertheless frequently utilized. The advantages are obvious. Territorial dispositions are matters of considerable importance to nations, and most would doubtless desire that the disposing document be of substantial dignity, namely, a treaty. As territorial questions are often threats to peaceful international relations, methods that result in an unequivocal settlement are desirable. Despite these advantages, however, not all wars end in peace treaties, even in recent times. The most prominent recent examples would be the international armed conflicts in Iraq and Afghanistan which ended without any peace treaty.\textsuperscript{12} Another example in recent decades would the Falklands War between the U.K. and Argentina. It should be noted however that in these cases, the U.S. and U.K. did not actually seek to acquire new territory – the U.K. for example arguing that it was defending its territory from invasion.

Peace treaties often deal with many subjects – setting forth various arrangements such as demilitarized zones, resource access and allocation, refugee status, prohibited behavior, debt settlement, re-application of already existing treaties, dispute resolution mechanisms, transit rights, servitudes, and so on – but they are mainly concerned with the allocation of territory.\textsuperscript{13} Peace treaties can thus, in most instances, be considered a subset of territorial treaties, typically involving the cession of territory from one state to another after the end of hostilities.\textsuperscript{14} It should also be noted that territorial treaties are not restricted to the allocation of \textit{land} – treaties affecting water and navigational rights on rivers are also considered “territorial.”\textsuperscript{15}

Cease-fire agreements should be distinguished from peace treaties. In addition, in the case of internal conflicts such as a civil war, peace “treaties” are not typically used since the

\textsuperscript{10} SHAW, supra note 2, at 501. \textit{See also In re Goring}, 13 INTERNATIONAL LAW REPORTS 203 (1946).

\textsuperscript{11} Charter of the United Nations art. 2(4), Oct. 24, 1945, 1 U.N.T.S. 16. \textit{See also} Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 94 L.N.T.S. 57 [hereinafter \textit{Kellogg-Briand Pact}] (banning war as a tool of national policy); S. C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967) (emphasizing the “inadmissibility of the acquisition of territory by war”); 1970 Declaration of Principles of International Law (“the territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”); G.A. Res. 3314 (XXIX), art. 5(3), U.N. Doc. A/RES/3314 (Dec. 14, 1974) [hereinafter \textit{Consensus Definition of Aggression}]; Vienna Convention on the Law of Treaties art. 52, 1155 U.N.T.S. 331 (May 23, 1969) [hereinafter \textit{Vienna Convention}] (providing that treaties procured by duress may be void). \textit{But see} Part II.2 infra for a discussion on intertemporal law, under which treaties must be interpreted on the basis of the international law in existence when the treaty rights were created as well as the law applicable to that right’s continued existence.

\textsuperscript{12} For a discussion on the lack of peace treaty between the U.S. and Iraq/Afghanistan, \textit{see} Tanisha M. Fazal, \textit{The Demise of Peace Treaties in Interstate War}, 67 INTERNATIONAL ORGANIZATION 695 (2013).

\textsuperscript{13} Steiger, supra note 9, at 87.

\textsuperscript{14} Cession of territory however can also occur under other situations, for instance, the sale/purchase of territories and even the gifting of territories. \textit{See, e.g.}, OPPENHEIM’S INTERNATIONAL LAW, supra note 1, at 681-82.

\textsuperscript{15} Case Concerning Gabčíkovo-Nagymaros Project case (Hungary/Slovakia), 1997 I.C.J. 7, ¶ 72 (Sept. 25).
conflict is not one between two sovereign states. However, where there is a successful secession – and the rise of a new state – the end of the war would typically be concluded by a peace treaty, for example, the 1783 Treaty of Paris between Great Britain and the (new) United States.

Sometimes, there can be a considerable delay between the start of occupation and the conclusion of a peace treaty. For example, even though Japan surrendered on August 14, 1945, the war against and Japan and its occupation did not formally cease until the 1951 San Francisco Peace Treaty entered into effect on April 28, 1952. Similarly, the Sino-Japanese War was not formally terminated until the Treaty of Taipei entered into force on August 5, 1952.16

Although there has been an increased use of “peace treaties” to end internal conflicts,17 this paper primarily focuses on interstate peace treaties that contain territorial settlements. Part II of this paper provides an overview of some of the representative territorial settlements in peace treaties from Asia, Europe, the Middle East, Americas, and Africa. Finally, Part III provides a summary of findings form these representative cases and their implications for territorial boundary disputes in Asia.

II. OVERVIEW OF TERRITORIAL SETTLEMENTS IN PEACE TREATIES

To provide a comprehensive list of all peace treaties is well beyond the scope of this section,18 however, an attempt is made to provide a survey of some representative peace treaties that deal with territorial settlements in Asia, Europe, Middle East, Africa, and the Americas. The purpose of such a survey is to compare and contrast the nature of peace treaties concluded from different regions and times to discern any patterns in how territorial settlements occurred.

1. Europe

In contrast to Asia, where bitter disputes over territory settlements in the aftermath of WWII exist to the present day, territorial settlements in Europe from peace treaties are generally well-settled and uncontroversial matters. Europe is also a good example of the rule that the only way for the ceding states to regain territory is through another treaty. For example, the territories of Alsace and Loraine have been exchanged by treaties between Germany and France a number of times.19

17 See Fazal, supra note 12.
19 Chiang, supra note 5, at 8, n. 32 writes that:

“King Louis II of East Kingdom (later the Holy Roman Empire) acquired Alsace by the Treaty of Mersen in 870. France acquired Alsace in the Treaty of Ryswick in 1697 and Lorraine by marriage in 1766. Germany reacquired Alsace and Lorraine by the Treaty of Versailles in 1871. After the First World War, France again acquired Alsace and Lorraine under the Treaty of Versailles of 1919. Acquisition of a territory by marriage is analogous to acquisition by a merger agreement. Other examples include: the Treaty of Paris (1898), concluded at the end of the Spanish-American War, in which Spain ceded Puerto Rico to the United States; the Treaty of Nanking (1842), concluded at the
Europe is home to numerous peace treaties that have territorial settlements, perhaps the most famous being the Peace of Westphalia (1648), a series of peace treaties that ended two wars – the Thirty Years War (1618–1648) and the Eighty Years’ War (1568–1648) – and ushered in the era of the sovereign nation-states, a major landmark in the history of international law. The peace treaties are the Peace of Münster (15 May 1648), the Treaty of Münster (24 October 1648), and the Treaty of Osnabrück (24 October 1648). The latter two are also collectively called the “Treaty of Westphalia” as they were signed on the same day.

These peace treaties also rearranged the map of Europe. Some countries received territories or had their sovereignty over territories confirmed. For example, France acquired the bishoprics of Metz, Toul, and Verdun; Pinerolo, Breisach, and Philippsburg; Alsace and part of Strasburg. France probably benefited most from the treaties. Sweden obtained Western Pomerania, Wismar, Stettin, Stralsund, Mecklenburg, as well as the bishoprics of Bremen and Verden, and the islands of Rügen, Usedom, and Wollin, giving the country control over the Baltic Sea and the estuaries of the Oder, Elbe, and Weser rivers (that is, nearly the entire German coastline). Brandenburg gained Eastern Pomerania, and the bishoprics of Magdeburg and Halberstadt. The territorial clauses also favoured the allies of France and Sweden, such as Bavaria, Saxony, and Bohemia. The United Provinces of the Netherlands and the Swiss Confederation were also confirmed as independent republics.

1814 Treaty of Paris

The Treaty of Paris of 1814, signed on May 30, 1814, was concluded between the victorious allies (the Sixth Coalition) and defeated France, and confined France to its previous boundaries of 1792. Overall, the treaty was lenient: Britain returned the French colonies, with the exception of Tobago, St. Lucia, and Mauritius, although it retained

   end of the Opium War, in which China ceded Hong Kong to the United Kingdom; and the Congress of Vienna (1815), concluded at the end of the Napoleonic War, which settled the territories among the European States.” (citing Columbia Encyclopedia (6th ed. 2001)).

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20 The Thirty Years War (1618–1648) was (initially and at least partially) a religious conflict in Central Europe that eventually involved most European countries.
21 The Eighty Years’ War or Dutch War of Independence (1568–1648) was fought between Spain and the Dutch Republic.
23 Peace of Münster between the Dutch Republic and the Kingdom of Spain, signed on Jan. 30, 1648, officially ratified in Münster on May 15, 1648.
24 Treaty of Osnabrück (Instrumentum Pacis Osnabrugensis, IPO), concerning the Holy Roman Empire, the Kingdom of France, Sweden and their respective allies, signed on Oct. 24, 1648.
25 Treaty of Münster (Instrumentum Pacis Monasteriensis, IPM), concerning the Holy Roman Emperor and France and their respective allies, signed on Oct. 24, 1648.
Malta, and indemnity was not exacted from France.\textsuperscript{27} However, an extensive renunciation of territory by France was inserted in Article III: “France on her part renounces all rights of Sovereignty, Suzeraineté, and of possession, over all the Countries, Districts, Towns, and places situated beyond the Frontier above described, the Principality of Monaco being replaced on the same footing on which it stood before the 1st of January, 1792.”\textsuperscript{28}

The Treaty of 1814, like the Japanese renunciation in the San Francisco Peace Treaty, did not make the renunciation specifically in favour of any particular power or powers. This treaty, like the 1951 San Francisco Peace Treaty, contained three further provisions indicating the ultimate disposition of considerable portions of territory relinquished by France: “The States of Germany shall be independent, and united by a Federative Bond. Switzerland, Independent, shall continue to govern herself. Italy, beyond the limits of the Countries which are to revert to Austria, shall be composed of Sovereign States.”\textsuperscript{29}

However, unlike the San Francisco Peace Treaty and its subsequent circumstances, additional and more detailed dispositions of the renounced territories were later made by Allied Powers in the Definitive Treaty of Paris of 1815 (after Napoleon’s second and final defeat),\textsuperscript{30} the Final Act of the Conference of Vienna,\textsuperscript{31} and other subsequent treaties among the allies.\textsuperscript{32} Together, these treaties rearranged the map of Europe, undoing the organization set previously by Napoleon.\textsuperscript{33}

\textbf{1919 Treaty of Versailles}

Although the First Armistice at Compiègne ended the fighting in western Europe on November 11, 1918,\textsuperscript{34} the actual surrender of Germany only took place after six months of negotiating a peace treaty at the Paris Peace Conference, which resulted in the Treaty of Versailles, signed on June 28, 1919.\textsuperscript{35}

Owing in large part to the new principle of self-determination,\textsuperscript{36} the end of hostilities after World War I saw a significant rearrangement of Europe’s boundaries.\textsuperscript{37} Under parts II and


\textsuperscript{29} Treaty of Paris, id. art. VI; BRITISH AND FOREIGN STATE PAPERS, id. at 160.


\textsuperscript{33} Steiger, supra note 9, at 88.

\textsuperscript{34} First Armistice at Compiègne, Nov. 11, 1918, available at http://grande-guerre.org/?p=1063 (in French). The armistice did not deal with the issue of acquisition or loss of territory.


\textsuperscript{36} Steiger, supra note 9, at 90.
III of the Versailles Treaty, Alsace-Lorraine was “restored” to France, North Schleswig to Denmark, Moresnet, Eupen, and Malmedy to Belgium, and eastern territories to the new Polish state. Germany was also required to recognize Czechoslovakia’s independence and to cede parts of Upper Silesia. Some areas, such as Schleswig-Holstein, were set to be resolved later by a plebiscite. The city of Danzig was ceded to the League of Nations for the creation of the Free City of Danzig. Memel was ceded to the Allies for subsequent disposition by them. The Treaty also gave territories that Germany had taken from Russia to create new states in Eastern Europe.

Subsequent treaties with other Central Powers also further clarified the boundaries. The 1919 Treaty of Saint Germain between the Allies and Austria defined its frontier with Czechoslovakia and Yugoslavia. The 1920 Treaty of Trianon with Hungary delineated Hungary’s boundaries with its neighbors, taking land from Hungary and giving it to Romania, Czechoslovakia and Yugoslavia. The 1919 Treaty of Neuilly with Bulgaria ceded Bulgarian land to Greece, Romania and Yugoslavia.

In sum, the 1919 Treaty of Versailles, together with subsequent related treaties, required Germany to make substantial territorial concessions, in addition to disarming and paying large war reparations to certain countries.

### 1947 Paris Peace Treaties

The Paris Peace Treaties of 1947 were a series of peace treaties signed on 10 February 1947 between the Allied Powers and Bulgaria, Finland, Hungary, Italy, and Romania. The treaties permitted the countries to seek membership in the newly established United Nations as sovereign states. They also contained provisions on territorial arrangements. Italy lost her colonies in North and East Africa, as well as territories in Albania, China, and Greece. All five countries – Bulgaria, Finland, Hungary, Italy, and Romania – had their boundaries adjusted.

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39 Id. arts. 100-108.
40 Id. art. 99.
41 Id. arts. 116, 117.
Several years later, Austria, which was under joint Allied occupation, regained independence under the Austrian State Treaty with the United States, Great Britain, France, and the Soviet Union in 1955.\textsuperscript{48}

\textit{1990 Treaty on the Final Settlement with Respect to Germany}

Following the surrender of German armed forces in Europe on May 7-8, 1945, the Allies assumed “supreme authority” over the territory of Germany under the Berlin Declaration of June 5, 1945. They established the Allied Control Council which until 1948 acted on Germany’s behalf, even entering into legally binding agreements, although they disavowed any intent to annex territory.\textsuperscript{49} It should be noted however that the state of Germany continued to exist.\textsuperscript{50}

Unlike the case with Japan, Bulgaria, Finland, Hungary, Italy, and Romania, there was never any formal peace treaty between the Allied Powers and Germany. The United Nations was established on October 24, 1945, and a permanent peace arranged by means of a treaty was undoubtedly a goal, but even before the war “ended,” tensions rose between the Western Allies and the Soviet Union – ultimately, the two sides were unable to agree regarding a peace treaty with Germany. The country was divided into different zones occupied by the U.S., Great Britain, France and the U.S.S.R. (Berlin remaining a special area, not belonging to any zone). The zones of the former three became the Federal Republic of Germany in 1949, gaining independence in 1955, while the Soviet zone became the German Democratic Republic.

On October 19, 1951, the U.S. abolished the state of war with Germany by an act of Congress. This, however, is not the same as a peace treaty. Other countries similarly ended their state of war with Germany that year, such as Australia\textsuperscript{51} and the United Kingdom\textsuperscript{52} on July 9. The Soviet Union also ended its state of war with Germany in 1955.

The closest instance to a “peace treaty” with Germany is the Treaty on the Final Settlement with Respect to Germany, signed on September 12, 1990, between the former Allied Powers (France, U.K., U.S., and U.S.S.R.) and the two German states (Federal Republic of Germany and German Democratic Republic).\textsuperscript{53} Under the terms of the treaty, the Four Powers renounced all occupation rights in Germany, including the city of Berlin, allowing Germany to regain full sovereignty. Important territorial provisions include: (1) defining

\begin{itemize}
  \item \textsuperscript{48} Austrian State Treaty, signed on May 12, 1955, entry into force July 27, 1955.
  \item \textsuperscript{49} Declaration Regarding the Defeat of Germany and the Assumption of Supreme Authority with Respect to Germany and Supplementary Statements, 39 AMERICAN JOURNAL OF INTERNATIONAL LAW SUPPLEMENT 171 (1945) [hereinafter Berlin Declaration]. See SHAW, supra note 2, at 227.
  \item \textsuperscript{50} IAN BROWNlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 107 (1998) (describing the post-war situation in Germany as analogous to agency by necessity or legal representation). Some scholars however have argued that Germany’s complete defeat, surrender, and abolishment of its government meant that it ceased to exist as a sovereign state and a subject of international law. See, e.g., Hans Kelsen, The Legal Status of Germany, 39 AMERICAN JOURNAL OF INTERNATIONAL Law 518 (1948). However, the better view is that it continued to exist, albeit without full sovereignty, until sovereignty was finally restored following the 1990 Treaty on the Final Settlement with Respect to Germany.
  \item \textsuperscript{51} See, e.g. 52 INTERNATIONAL LAW REPORTS 505 (Elihu Lauterpacht and C. J. Greenwood eds. Cambridge University Press 1979).
  \item \textsuperscript{52} 23 INTERNATIONAL LAW REPORTS 773 (Herch. Lauterpacht ed., Cambridge University Press 1994).
  \item \textsuperscript{53} Treaty on the Final Settlement with Respect to Germany, signed Sept. 12, 1990, available at http://usa.usembassy.de/etexts/2plusfour8994e.htm (last visited June 2, 2014).
\end{itemize}
the permanent territory of a “united Germany” with the present borders, including the border with Poland, whereby Germany accepts the loss of territory east of the Oder-Neisse rivers (formerly East Prussia, Pomerania, and Silesia), even though those areas had historically been part of Germany; and (2) renouncing all territorial claims against other states both now and in the future. Subsequently, Germany also signed the German-Polish Border Treaty, a separate treaty with Poland reaffirming the present common border, on 14 November 1990.

1995 Dayton Agreement

The 1995 Dayton Agreement ended the Bosnian War (1992-1995) in the former Socialist Federative Republic of Yugoslavia. 54 Signed on 14 December 1995 between the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (FRY), the Agreement is unusual in the history of peace treaties. While most peace agreements have the purpose of cessation of hostilities, territorial arrangements, arms reduction, and so on, the Dayton Agreement went further. It sought to establish a new unified state of Bosnia and Herzegovina that would be a federation of two multi-ethnic entities – the Federation of Bosnia and Herzegovina and Republika Srpska, (each with its own constitution and considerable legislative authority) – with Sarajevo, the capital city, remaining unified. 55 Although there is debate about its success, 56 as of 2014, Bosnia and Herzegovina continues to exist as a single, sovereign state with two constitutive entities – plus, since March 5, 1999, the Brčko District as a neutral, self-governing administrative unit. 57 It should be noted however that narrowly speaking, the Dayton Agreement is not a peace “treaty” as it is not an agreement between two or more states. 58

2. Middle East

Well-known territorial peace treaties in the Middle East region include the Treaty of Sèvres, Treaty of Lausanne, Egypt–Israel Peace Treaty, and the Jordan-Israel Peace Treaty.

1920 Treaty of Sèvres

The Treaty of Sèvres was signed on August 10, 1920, 59 operating as an official statement of the demise of the Ottoman Empire and the rise of the new state of Turkey in its place. 60

57 That is not to say that the country has not been free of unrest. As recently as February-April 2014, the country was hit by a series of anti-government protests that spread throughout many cities.
58 Nevertheless, it should be noted that although the Bosnian War commonly viewed as a “civil war,” the ICJ has confirmed that the war was an international armed conflict. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) 2007 I.C.J. 91 (Feb. 26).
As the post-World War I peace treaty between the Allies and the Ottoman Empire, the Treaty of Sèvres mainly divided the Ottoman Empire between France and Britain, and in addition, most of its small territories in Europe around Constantinople were ceded to Greece.\(^{61}\)

The Treaty, however, was never ratified.\(^{62}\) It was rejected by the nationalist movement in Turkey that opposed the terms and loss of territory. Soon afterwards, the Greco-Turkish War of 1920-1922 broke out, and in the resulting Treaty of Lausanne, Turkey reacquired territory that it had previously ceded to Greece.\(^{63}\) The Treaty of Sèvres therefore became known as the shortest lived of modern peace treaties.

**1923 Treaty of Lausanne**

Signed in Lausanne, Switzerland on 24 July 1923, the Treaty of Lausanne\(^{64}\) ended the Greco-Turkish War of 1920-1922 between Turkey on one side and Britain, France, Italy, Japan, Greece, Romania, and the Kingdom of Serbs, Croats, and Yugoslavias on the other.\(^{65}\) Under the treaty, Turkey expressly renounced all claims to the remainder of the former Ottoman Empire’s territories, specifically renouncing in favor of Italy the Dodecanese Islands and Castellorizzo,\(^{66}\) as well as recognizing British possession of Cyprus.\(^{67}\) In return, the Allies recognized the new boundaries of Turkey, except for its border with Iraq.\(^{68}\)

A territorial dispute later arose regarding the interpretation of article 16 of the treaty in *Eritrea-Yemen Arbitration*,\(^{69}\) which contained an express Turkish renunciation of all rights and title to former Ottoman territories and islands. The tribunal held that after Turkish renunciation of those islands, they did not become *res nullius* by any State, including any of the High Contracting Parties, nor did they automatically revert to Yemen. Instead, sovereign title over them remained indeterminate *pro tempore*.

**1979 Egypt–Israel Peace Treaty**

Presently, Israel has been a party to peace treaties with only two Arab countries so far, Egypt and Jordan. (Peace talks, however, between Israel and Palestine remain an ongoing process.)

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63 TUCKER, *supra* note 92.


66 arts. 15, 16.

67 Treaty of Lausanne, *supra* note 96, art. 20.

68 Id. arts 2, 3.

Egypt and Israel have fought four conflicts since 1967: the Middle East war of June 1967, a short war in 1956/57, War of Attrition of 1970, and the Yom Kippur War of 1973. On 26 March 1979, Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin signed the Egypt–Israel Peace Treaty in Washington, D.C. The treaty’s main territorial provision was Israel’s withdrawal from the Sinai Peninsula (which it had seized during the 1967 Six-Day War), including the Alma oil fields. Other important stipulations included the mutual recognition of each state, establishment of permanent boundaries, ending the state of war between the two countries, the normalization of relations, and the demilitarization of the Sinai on part of Egypt. The Sinai was returned to Egypt that same year. This was a landmark peace treaty as it was the first ever between Israel and an Arab country.

It should be noted that the peace treaty was not without controversy. The reaction from the Arab world was immediate and strongly negative. From 1979 to 1989 Egypt was suspended from the Arab League, and President Anwar Sadat was assassinated on October 6, 1981. In more recent times, the events of the 2011 Egyptian Revolution and the 2013 Egyptian coup d’état has generated uncertainty over the future of the treaty.

1994 Jordan-Israel Peace Treaty

The second peace treaty between an Arab country and Israel is the Jordan-Israel Peace Treaty signed on October 26, 1994. In addition to ending hostilities, the treaty addressed issues relating to international boundaries, security, water, freedom of passage, places of historical and religious significance, and refugees and displaced persons. In particular, the territorial clauses delimited the international boundary between the two countries, including airspace and territorial waters. A special regime was established for the Naharayim/Baqura and Zofar/Al-Ghamr areas which were recognized as “under Jordan’s sovereignty with Israeli private land use rights.” The treaty also stipulated an equitable distribution of the Yarmouk and Jordan rivers.

72 Id. art. I.
73 Id. art. III.
74 Id. art. II.
75 Id. art. I.
76 Id. art. III.
77 Id. art. I; id. Annex I, art. I.
81 Id. art. 3.
82 Id. Annex I(b)-(c).
83 Id. arts. 6, Annex II.
3. Americas

1713 Treaty of Utrecht

The 1713 Treaty of Utrecht was a series of some twenty-three peace treaties mostly signed in Utrecht between March–April 1713 by the belligerent states84 in the War of Spanish Succession (1701–1714).85 For the purposes of this section, the most notable ones are the treaties between: (1) France and Great Britain,86 (2) Spain and Great Britain,87 (3) France and Portugal,88 and (4) Spain and Portugal.89 These four treaties rearranged European colonial territories in North and South America: France ceded a number of territories to Great Britain, including Newfoundland, Acadia, St. Christopher, and the Hudson Bay Company’s territory in Rupert’s Land; Spain ceded Gibraltar and Minorca to Great Britain (which thereafter ensured British access to the Mediterranean); France transferred Rio de Janeiro in Brazil back to Portugal; and Spain returned Colonia del Sacramento in Uruguay to Portugal.90

1763 Treaty of Paris

After British victory in the Seven Years’ War (which was known as the “French and Indian War” in North America), the 1763 Treaty of Paris was signed on February 10, 1763 between Great Britain, France and Spain, with Portugal in agreement.91 The three states received and ceded numerous territories in North America among themselves; in general, territories gained during the course of the war were returned, but Britain in particular gained considerable territories from France, which ceded all of her territories in the North American mainland to Britain and Spain. Significantly, Great Britain acquired Canada.92 In addition, Britain acquired territories east of the Mississippi, Grenada, and the

84 That is, Spain, Great Britain, France, Portugal, Savoy and the Dutch Republic.
89 Peace and Friendship Treaty of Utrecht between Spain and Portugal was Feb 6, 1715.
92 Helen Dewar, Canada or Guadeloupe?: French and British Perceptions of Empire, 1760–1783, 91 CANADIAN HISTORICAL REVIEW 637 (2010).
Grenadines from France. This treaty was regarded as the start of Great Britain’s maritime and colonial dominance.93

1783 Peace of Paris: Treaty of Paris and three Treaties of Versailles

The 1783 Peace of Paris was a series of treaties that concluded the American Revolutionary War: the 1783 Treaty of Paris (between Great Britain and the U.S.)94 and the three 1783–84 Treaties of Versailles (between Great Britain and France.95 Great Britain and Spain,96 and Great Britain and the Netherlands97). The 1783 Treaty of Paris resulted in Great Britain losing her 13 American colonies and the resulting new country gaining significant territory. The boundary between British North America and the U.S. was defined generously for the latter: from the Atlantic Ocean in the east to the Mississippi River in the west, and from Canada and the Great Lakes in the north to the 31st parallel in the south.98 In addition, the right of navigation in the Mississippi River was granted to citizens of both U.S. and Great Britain.99

The U.S. allies – France, Spain, and the Dutch – however reaped somewhat less spectacular results in their respective treaties with Great Britain. For France, the treaty largely reinforced the earlier 1763 Treaty of Paris, apart from some acquisitions in the West Indies and Africa (for example, the island of Tobago in the Caribbean, and Senegal in Africa).100 Spain received captured territories in Florida as well as the island of Minorca from Britain, whereas Britain retained Gibraltar.101 The Netherlands received captured territories in exchange for British trading privileges in the Dutch East Indies.102

1848 Treaty of Guadalupe Hidalgo

Signed between the U.S. and Mexico on February 2, 1848, the Treaty of Guadalupe Hidalgo ended the Mexican–American War (1846–48).103 Under the terms of the treaty, Mexico ceded Alta California104 and New Mexico to the U.S. In exchange, the U.S. provided Mexico with $25 million and assumed $3.25 million of Mexico’s debt owed to U.S. citizens. The Rio Grande was now selected as the new boundary between Mexico and

95 1783 Treaty of Versailles between Great Britain and France, signed on 3 September 1783, reprinted in BRITISH AND FOREIGN STATE PAPERS, supra note 60 at 777.
96 Id. 1783 Treaty of Versailles between Great Britain and Spain, signed on September 3, 1783.
97 1784 Treaty of Versailles between Great Britain and the Netherlands, signed on May 20, 1784.
99 Id.
100 Paris, Treaty of, supra note 59.
101 Id.
104 Alta California (Upper California) was a department of Mexico (previously belonging to the Viceroyalty of New Spain) that covered a large area spanning present-day California, Nevada, Utah, Arizona, as well as parts of Colorado and Wyoming.
the State of Texas (which had recently been annexed by the U.S. from Mexico in 1845).105 All in all, the U.S. acquired about 1.36 million km² of territory.

1849 Arana–Southern Treaty and Falkland Islands Dispute

The 1849 Arana–Southern Treaty ended the Anglo-French naval blockade of the Río de la Plata against the Argentine Confederation.106 (France signed a separate peace treaty with Argentina the following year). This treaty is notable for its connection with the on going dispute between the Argentina and the U.K. regarding sovereignty over the Falkland Islands.107 Under the terms of the treaty, Britain returned the occupied island of Martin Garcia to Argentina.108 However, there is no specific reference in the treaty to the Falkland Islands, which remained in British possession. This omission, together with certain language in the preamble – “being desirous of putting an end to the existing differences, and of restoring perfect relations of friendship” – has been submitted as evidence that Argentina gave up its legal claim to the islands.109 In combination with this, the U.K. points out that after ratifying the peace treaty, Argentina did not diplomatically protest British possession of the islands, except once in 1888, until 1939.110 On the other hand, Argentina counters that under the principle of uti possidetis, it has ownership by virtue of its succession to the territorial title of Spain which previously owned the island.

1898 Treaty of Paris

The 1898 Treaty of Paris ended the Spanish-American War of 1898.111 Under the terms of the treaty, which favoured the U.S., Spain relinquished all claims to title over Cuba, allowing the U.S. to temporarily occupy the island under the subsequent Teller Amendment112 and Platt Amendments.113 Spain also ceded Puerto Rico and other

105 Treaty of Guadalupe Hidalgo, supra note 135, art. 5.
108 Convention of Settlement, supra note 138, art. I.
109 Id. Art. VII also reads: “Under this Convention perfect friendship between Her Britannic Majesty's Government and the Government of the Confederation, is restored to its former state of good understanding and cordiality.”
possessions in the Spanish West Indies, Guam, and the Philippines to the U.S. – in exchange, the U.S. paid Spain $20 million for the Philippines. The subsequent 1900 Treaty of Washington also clarified some details regarding the cession of the Philippines.¹¹⁴

4. Asia

Nearly all Asian countries are involved in some territorial or boundary dispute with neighbouring countries.¹¹⁵ Such disputes are further complicated by the legacy of colonialism and intertwined political and legal issues. Often, the claimants for ownership of the disputed territories rely on ancient historical sources for support.

1763 Treaty of Paris

The 1763 Treaty of Paris,¹¹⁶ which ended the Seven Years’ War, also affected parts of Asia. While French troops was allowed to return to posts in East India, they were prohibited from building forts or keeping forces in Bengal – effectively giving control of India to Great Britain.¹¹⁷ In addition, Britain returned the Philippines to Spain.¹¹⁸

1898 Treaty of Paris

As mentioned above, the 1898 Treaty of Paris¹¹⁹ saw Spain ceding Guam and the Philippines to the U.S. – for the latter, the U.S. paid $20 million to Spain in exchange. The 1900 Treaty of Washington later clarified Article III of the 1898 Treaty of Paris regarding the details of the cession of the Philippines.¹²⁰ The importance of the treaty for the U.S. cannot be overemphasized as the acquisition of Guam and the Philippines allowed the U.S. to expand its influence in the Pacific.

1905 Treaty of Portsmouth

Signed on September 5, 1905, the Treaty of Portsmouth formally ended the Russo-Japanese War (1904-05).¹²¹ Under the terms of the treaty, Russia returned Manchuria to


¹¹⁵ For example, Japan claims sovereignty over the Kurile Islands/Northern Territories against Russia; over the Diaoyu/Senkaku Islands against China and Taiwan; and over Liancourt Rocks/Dokdo/Takeshima against Korea. Other territorial disputes in Asia include: the competing claims over the Spratly Islands (by China, Malaysia, Philippines, Taiwan, Vietnam, and Brunei), Paracel Islands (by China, Vietnam, and Taiwan), New Moore/South Talpatty/Purbasha Island in the Bay of Bengal (by Bangladesh and India), Kashmir (by China (Aksai Chin), India (by Jammu and Kashmir), and Pakistan (by Azad Kashmir and the Northern Areas)). Other key issues involving territory include the division of Korea into two ideologically opposed States (North/South) as well as the so-called Taiwan Straits issue between China and Taiwan.

¹¹⁶ See 1763 Treaty of Paris, supra note 123.


¹¹⁸ Id.

¹¹⁹ 1898 Treaty of Paris, supra note 143.


China, removing all its troops. Russia constructed railway lines in South Manchuria, the disputed Liaodong peninsula (containing the ports of Dalian and Port Arthur), and the southern half of Sakhalin Island were ceded to Japan without any payment. Furthermore, Russia recognized Korea's independence, as well as Japan's "paramount political, military, and economic interests" in the country. Thus, the treaty along with the secret 1905 Taft-Katsura Agreement (between Japan and the U.S.)\(^{123}\) and the 1902 Anglo-Japanese Alliance treaty (between the U.K. and Japan)\(^{124}\) ultimately allowed Japan to gain control over Korea.

The treaty is particularly significant in that it marked the rise of Japan as an international power. It was also the last major instance of cooperation in U.S.-Japanese relations since the Meiji Restoration in 1868. Relations would soon deteriorate until they were normalized after World War II.

**1951 San Francisco Peace Treaty**

The most prominent peace treaty in East Asia that is at the center of ongoing, bitter territorial disputes, is probably the 1951 San Francisco Peace Treaty,\(^{125}\) signed between Japan and many of the Allied Powers on September 8, 1951. There were a total of 48 signatories. However, some countries – most notably, China, India, and Russia – were not party to the treaty, and as a result, Japan signed separate agreements with them later resulting in the following: (1) 1952 Treaty of Taipei (R.O.C. government);\(^{126}\) (2) Treaty of Peace Between Japan and India;\(^{127}\) (2) 1956 Soviet–Japanese Joint Declaration;\(^{128}\) and (3) 1978 Treaty of Peace and Friendship between Japan and the People's Republic of China (P.R.C. government).\(^{129}\)

The San Francisco Peace Treaty formally ended war in the Pacific; provided for compensation to Allied POWs and civilian victims of war crimes; and reallocated Japanese territories. In particular, Japan ceded various offshore territories: Antarctica, Formosa (Taiwan) and the Pescadores, Hong Kong (then a British colony), Korea, the Kuril Islands, Sakhalin Island, and the Spratly Islands.\(^{130}\)


\(^{130}\) SF Peace treaty, supra note 157, arts. 2-4
Much of the uncertainties surrounding the major territorial disputes in Northeast Asia – Kurile/Northern Islands, Diàoyúdǎo/Senkaku Islands, and the Dokdo/Takeshima Island disputes – are a by-product of the 1951 San Francisco Peace Treaty. Specifically, the Treaty failed to define the "Kurile Islands" and specify the entity in whose favor Japan had renounced sovereignty over the disputed islands. Furthermore, the Diàoyúdǎo/Senkaku Islands and the Dokdo/Takeshima Islands were not even specifically mentioned in the territorial clauses (articles 2-4) of the Treaty. Not surprisingly, these three island groups continue to be at the center of bitter disputes and tense relations in the region.

The earlier drafts of the Treaty shed some light in interpreting the territorial dispositions regarding these disputed islands. The territorial clause of the Treaty regarding the Kurile Islands can be interpreted as follows: (1) the Soviet Union is the only recipient of the Kurile Islands envisaged by the Allied Powers; (2) there were no agreed definition of the "Kurile Islands" among the Allied Powers; and (3) there are strong indications that the Allied Powers actually preferred not to resolve the matter of the ultimate disposition of the Kurile Islands in the San Francisco Peace Treaty.\(^{131}\)

Regarding the Diàoyúdǎo/Senkaku Islands, they were not included as either Chinese/Taiwanese or Japanese territory by the drafters of the San Francisco Peace Treaty. Furthermore, article 3 of the Treaty did not, to the point of specificity, define the territories placed within the area of the United Nations trusteeship with the United States as the sole administering authority.\(^{132}\)

In addition, the territorial clause on Dokdo/Takeshima Island could indicate that the San Francisco Peace Treaty assigned it to Japan. However, due to the contradictory nature of the various drafts of the treaty, Korea arguably remains free to establish that the island was included as part of the “Korea” renounced by Japan in the San Francisco Peace.\(^{133}\)

As can be seen, these controversies did not arise solely as independent territorial disputes among Japan, China/Taiwan, Korea, and Russia. Rather, they reflect the legacies of post-war decision-making, which was shaped by the geopolitical and strategic interests of the Allied Powers, rather than the interests of East Asian countries. Although the claimants for ownership of these disputed territories often rely on ancient historical sources for support, such considerations were not regarded as major factors in the territorial dispositions that occurred after World War II.

5. Africa

1763 Treaty of Paris

The 1763 Treaty of Paris, which ended the Seven Years’ War as mentioned above, also affected territories in Africa. In particular, France ceded Senegal to Great Britain.

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132 Id. at 56-58.

133 For further information, see Seokwoo Lee, *The San Francisco Peace Treaty with Japan of 1951 and the Territorial Disputes in East Asia*, 11 PACIFIC RIM LAW & POLICY JOURNAL 63 (2002).
One of the 1947 Paris Peace Treaties was the Treaty of Peace with Italy, signed by Italy and the Allied Powers on February 10, 1947, ending the hostilities between them. As mentioned above, under the terms of the treaty, Italy renounced its colonies in Italian North (Italian Libya and other territories) and Italian East Africa (four provinces of Ethiopia, Italian Eritrea and Italian Somaliland). In addition, Italy recognized the Ethiopia’s and Albania’s independence ceding the island of Saseno to the latter.

Pursuant to the Agreement, the Ethiopian-Eritrean Boundary Commission (EEBC) was subsequently formed. The EEBC delivered its Decision on Delimitation of the Border between Eritrea and Ethiopia on April 13, 2002. Subsequently, between November 2002 and late 2003, the EEBC worked on the demarcation of the boundary, but progress remained elusive due to the rigid and irreconcilable positions of the Eritrea and Ethiopia, and in the end, demarcation efforts were placed on hold. Although efforts were resumed (unsuccessfully) from March 2006 to September 2007, no agreement on demarcation has yet been reached.

**III. OBSERVATIONS AND CONCLUSION**

The representative peace treaties summarized above and catalogued by region largely involve European states even though the treaties were legal settlements of conflicts outside of Europe. European territorial settlements established from peace treaties are generally well-settled and uncontroversial. Europe is home to numerous peace treaties that have shaped much of modern international law, the foremost being of course the Peace of Westphalia (1648). The Middle East, Americas, and Africa are also home to numerous peace treaties with territorial settlements. Yet, in many instances, particularly in the Americas, Africa, and Asia, the peace treaties were centered around European powers or in the case of Asia, Japan, which were struggling for colonial control over these continents. While there are instances of peace treaties between states within these regions, the

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134 Treaty of Peace with Italy, supra note 79.
majority of these agreements involve imperial European powers. While this is not a surprising observation given the geopolitical importance of European states in the 18th, 19th, and 20th centuries, the impact on the character and nature of these treaties on the contours of international law cannot be understated. The European experience of statecraft and international relations has provided the foundation for how these peace treaties were drafted, interpreted, and implemented.

Sometimes peace treaties specifically designate the recipient of territorial disposition, but it is not uncommon for the defeated state to grant the power of disposition in a peace treaty without naming a specific recipient – in other words, a blanket renunciation of territory. There are a number of precedents for such blanket renunciations in peace treaties. In the 18th and 19th centuries, a considerable portion of Europe and its foreign territories were carved up successively through these processes. For example, the Treaty of Paris of 1814, concluded between the victorious allies and defeated France, which defined new French boundaries, contained a sweeping renunciation of territory in Article III. Other blanket renunciations of territory include: the Treaty of Peace of 1898 between the United States and Spain and the Japanese renunciation in the 1951 San Francisco Peace Treaty.

Traditionally, pure annexation permitted states to acquire territories of a defeated enemy. Contemporary international law now however requires peace treaties to reallocate territorial sovereignty, even in the aftermath of a war. Nevertheless, in the past, peace treaties were often utilized to make territorial dispositions, as they had the benefit of precision and clarity. Most, though not all, peace treaties deal with the settlement of territory and can be considered as a subset of territorial treaties.

The Vienna Convention on the Law of Treaties provides the general rules for interpreting territorial provisions in peace treaties. But additional rules, such as intertemporal law, must often be considered when examining peace treaties, especially those that were concluded outside of Europe and before the advent of the prohibition against the use of force in interstate relations.

Intertemporal law raises questions about what legal rules to apply to particular disputes at particular times. The claims of parties to disputed territory must therefore be evaluated using the international law and the prevailing legal standards in existence at the “critical date” when the disputes are and the issue must be discussed within the context of the critical date.

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137 In the Island of Palmas Arbitration, the issue of intertemporal law was addressed:
As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called intertemporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law. Islands of Palmas Arbitration, supra note 18, at ¶ 845. According to the principle of intertemporal law, only the rules of international law valid at the time of the act can be applied. A principle closely related to intertemporal law is uti possidetis, according to which colonial boundaries, however arbitrarily drawn by the imperial powers, are to be respected. See also T.O. Elias, The Doctrine of Intertemporal Law, 74 AMERICAN JOURNAL OF INTERNATIONAL LAW 285 (1980); J. WESTLAKE, INTERNATIONAL LAW VOL. 1 112 (CUP Cambridge 1904) (“Titles must be judged by the state of international law at the time when, if at all, they arose”).

138 MALAN CZ UK, supra note 20, at 155-56. See also Western Sahara, supra note 18, at ¶¶ 37-40.
Other questions that must be explored within the context of the critical date include: (1) whether, at the material time, legal concepts or a legal regime on territorial acquisition existed outside Europe; (2) and more importantly, assuming that such a regime existed, what role, if any, should it play in the resolution of the disputes in question; (3) and, if such a regime existed, what impact do subsequent factual and legal developments have, especially if the areas in question have been subject to significant factual and legal changes over the years?139

The doctrine also applies when interpreting peace treaties established prior to the prohibition against the threat or use of force enshrined in article 2(4) of the United Nations Charter. This is a potential issue since article 52 of the Vienna Convention on the Law of Treaties (Coercion of a State by the threat or use of force) provides that a “treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.” On the basis of this provision, it would appear that most peace treaties prior to the advent of the Charter are void. However, if the intertemporal law is applied, such treaties must be interpreted in light of the prevailing legal standards of their time, rather than the current era of international law. In addition, the doctrine’s proviso that the continued existence of rights that were previously created under the prevailing international law of another era depends on their comporting with the evolution of international law, does not apply to territories that have an “established order of things.”140

Intertemporal law often is particularly utilized when considering territorial acquisitions and losses that took place outside Europe, before modern international law was introduced into these regions. In Asia, for instance, it has been debated whether Asian history exhibited an essential difference between Asian legal concepts and the principles of general international law regarding the modes of acquiring and losing territory.141

Although the main purpose of intertemporal law is to strengthen legal security in international relations,142 intertemporal law is criticized as “a mere political handmaiden to the politics of power of the imperial states who set out on a worldwide conquest of territory,”143 and that it has been used “to legitimize” blind acceptance of past manipulations of a legal system that was created by, dominated by and imposed by

140 Island of Palmas case, supra note 18, at ¶ 839-45. See SHAW, supra note 2, at 508-9.
141 G. AUSTIN, CHINA’S OCEAN FRONTIER: INTERNATIONAL LAW, MILITARY FORCE AND NATIONAL DEVELOPMENT 355-62 (1998); L. TUNG, CHINA AND SOME PHASES OF INTERNATIONAL LAW 13 (China Institute of Pacific Relations 1940).
142 Cameroon v. Nigeria, supra note 18, Ranjeva, separate opinion, ¶ 3.
imperial states upon the rest of the world.” International law has operated in historical periods to validate the acquisition of territory by states regardless of the intentions of colonized states. Earlier formulations of general principles of international law for territorial acquisition upheld empires that led to the current political configuration of Asia and beyond.

Many Asian countries are currently involved in a boundary dispute with neighbouring countries, but not all are related to territorial settlements in peace treaties. Some of the more notable examples of disputes in Asia based on territorial clauses in a peace treaty that include the ongoing disputes over the Kurile/Northern Islands, Diàoyúdǎo/Senkaku Islands, and Dokdo/Takeshima Island. Much of the uncertainty surrounding these issues can be traced to the territorial clauses in the 1951 San Francisco Peace Treaty.

\[144\] \textit{Id.}\