

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Edited by **Beth A. Simmons**
and **Richard H. Steinberg**

In this article I trace the dramatic change in attitudes and practices of states in the Westphalian international order concerning the use of force to alter interstate boundaries. *** In the first section I briefly outline the attitudes and practices of states regarding territorial boundaries from the seventeenth century until World War II. In the second section I focus on the remarkable changes in beliefs and practices from World War II until the present. In the third section I explore the roots of the territorial integrity norm. States' motivations for accepting the territorial integrity norm have been both instrumental and ideational, and the importance of different motivations has varied among groups of states. ***

INTERNATIONAL BOUNDARIES FROM THE SEVENTEENTH TO THE EARLY TWENTIETH CENTURY

Political life has not always disclosed a clearly defined system of international boundaries. The medieval world did not have international boundaries as we understand them today;⁵ authority over territorial spaces was overlapping and shifting. The political change from the medieval to the modern world involved the construction of the delimited territorial state with exclusive authority over its domain. Even at that, precisely surveyed national borders only came into clear view in the eighteenth century.⁶ In the words of Hedley Bull, the practice of establishing international boundaries emerged in the eighteenth century as "a basic rule of co-existence."⁷

The birth of the modern interstate system is often dated at the 1648 Peace of Westphalia, although key features of the system emerged gradually and fluctuated in strength before and after 1648. Initially, the legitimacy of interstate borders was defined in dynastic terms: state territory was the exclusive property of ruling families, and they had an absolute right to rule their territories. But this international order did not reflect any absolute right to *particular* territory that could *legitimately* change hands by inheritance, marriage, war, compensation, and purchase.⁸ In these early centuries of the Westphalian order territory was the main factor that determined the security and wealth of states, and thus the protection and acquisition of territory were prime motivations of foreign policy. Most wars, in fact, concerned the acquisition of territory,

⁵ Clark 1961, chap. 10.

⁶ Clark 1972, 144.

⁷ Bull 1977, 34-37.

⁸ Holsti 1991.

and most of these wars led to exchanges of territory; this practice continued until the middle of the twentieth century (see Table 12.1). These practices were reflected in the legal norm concerning the legitimacy of conquest. To quote the eminent international legal scholar Lassa Oppenheim writing in 1905, "As long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory."⁹

In the early centuries of the Westphalian system the populations of the early modern states were often culturally diverse and politically disorganized. Many people were not collectively identified by state borders that moved back and forth without much regard for them.¹⁰ The practice of drawing boundaries in disregard of the people living in the territories was extended from Europe to the rest of the world during the age of Western colonialism from the sixteenth through the nineteenth centuries. This was often carried out with little attention to the cultural and ethnic character of the indigenous peoples of the non-European world. Yet it was the borders that were initially drawn and imposed by Western imperialists that later became the acceptable reference for articulating anticolonial demands for self-determination and independent statehood.¹¹

The nineteenth century was, of course, the age of nationalism, which was spurred by the French Revolution and Napoleon's support for popular sovereignty and national self-determination. These intellectual currents began to alter peoples' views concerning the legitimacy of territorial conquests. "From the middle of the nineteenth century the current of opinion, influenced by the growing belief in national self-determination, was moving against the legitimacy of annexation outside the colonial sphere, when effected without the consent of the inhabitants."¹² Sharon Korman referred to this change in attitudes as the beginning of an "important change in the *moral climate* of international relations."¹³ This moral climate, with its clear democratic thrust, however, had conflicting implications for the stability of boundaries. On the one hand, nationalism supported the precept that a territory belonged to a national grouping and it was wrong to take the land from a nation. On the other hand, nationalism

⁹ Quoted in Korman 1996, 7. Juxtapose this with the statement of Professor Lauterpacht in the 1955 edition of Oppenheim's *International Law* in Korman 1996, 179.

¹⁰ Clark 1972, 143.

¹¹ See Jackson and Rosberg 1982; and Korman 1996, 41–66.

¹² Korman 1996, 93.

¹³ *Ibid.*, 39 (italics added). Malcolm Anderson has spoken of "the sacralization of homelands" as a result of the growth of nationalism. Anderson 1996, 3.

TABLE 12.1. *Interstate Territorial Wars, 1648–2000*

a. Wars by historical era				
Period	Territorial conflicts	Conflicts resulting in redistribution of territory	Conflicts in which territory was redistributed	Territorial redistributions per year
1648–1712	19	15	79%	0.23
1713–1814	30	24	80%	0.24
1815–1917	25	20	80%	0.19
1918–1945	18	16	88%	0.59
1946–2000	40	12	30%	0.22
b. Wars by half century				
Period	Territorial conflicts	Conflicts resulting in redistribution of territory	Conflicts in which territory was redistributed	Territorial redistributions per year
1651–1700	14	11	79%	0.22
1701–1750	16	14	88%	0.28
1751–1800	12	8	67%	0.16
1801–1850	13	11	85%	0.22
1851–1900	14	10	71%	0.20
1901–1950	26	23	89%	0.46
1951–2000	37	10	27%	0.20

Sources: Data used to identify territorial wars between 1648 and 1945 is from Holsti 1991. Holsti classifies wars according to twenty-two issues. Six of these are clearly concerned with control over territory: territory, strategic territory, colonial competition, empire creation, maintaining integrity of empire, and national unification. Additional information on these conflicts was derived from a number of secondary sources, including Goertz and Diehl 1992; Goldstein 1992; McKay and Scott 1983; and Taylor 1954. Wars are classified by their beginning date.

Information on territorial wars between 1946 and 2000 was also obtained from a large number of secondary sources, including Bercovitch and Jackson 1997; Goertz and Diehl 1992; Kacowicz 1994; Huth 1996; and Wallenstein and Sollenberg 1998. Goertz and Diehl focus on territorial conflicts where there were exchanges of territory; Kacowicz examines cases of peaceful territorial change; and Huth includes territorial disputes that involved and did not involve international violence. The Correlates of War list of conflicts was also consulted. It includes territorial wars with over one thousand deaths. Singer and Small 1982. There were five conflicts between 1946 and 2000 that led to minor border alterations and are not included under “Conflicts resulting in redistribution of territory.” For descriptions of the territorial aggressions between 1946 and 2000, see Table 12.2.

provided grounds for a national grouping in one state trying to secede to form an independent state or to unite with its ethnic compatriots living in other states. In fact, nationalism had a more disruptive than pacifying effect on international relations in the late nineteenth and early twentieth centuries, as was witnessed in the wars surrounding the unification of the German and Italian peoples and in the division of the Hapsburg, Hohenzollern, and Ottoman empires into numerous national states.¹⁴

Three interrelated territorial issues during and at the end of World War I were whether the victorious states should be able to take territory from the defeated, whether states should commit themselves to respect the territorial integrity of other states, and whether national self-determination should take precedence over respect for existing state boundaries in shaping the territorial order. On the first issue, in the early years of World War I the major states still supported the right of victorious states to realize territorial gains, and this was reflected in their secret treaties concerning territorial exchanges at the end of the war. This perspective was altered significantly following the United States' entry into the war, the Russian revolution in 1917, and popular pressure against territorial annexation in some countries.¹⁵ In the 1919 Versailles settlement the victorious states only obtained small territorial concessions in Europe, although they realized some significant gains by dividing up the colonies of the defeated powers. Still, these colonies were declared League Mandates, and the new colonial powers were implicitly obligated to prepare the colonial peoples for self-governance – especially in the case of the former Turkish territories.¹⁶ ***

On the second issue, the obligation to uphold the territorial integrity of all states, President Woodrow Wilson was the strongest protagonist. His famous “Fourteenth Point” spoke of “specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.”¹⁷ Such a revolutionary proposal took the form of Article 10 of the League of Nations Covenant, whose approval really constituted the beginning of states' formal support for the territorial integrity norm. It read: “The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”

¹⁴ See Cobban 1969; and Mayall 1990.

¹⁵ Korman 1996, 132–36.

¹⁶ See Article 22 of the League Covenant; Claude 1964, 322–28; and Korman 1996, 141–42.

¹⁷ See Zimmern 1939, 199; Egerton 1978; and Knock 1992.

On the third question of the weight that should be given to the right of national self-determination in redrawing international boundaries, there was clearly tension within democratic governments between protagonists of national self-determination and respect for existing boundaries; and the former generally lost. Even President Wilson, who was viewed as the leader of the national self-determination cause, came out fundamentally on the side of respect for territorial integrity. National self-determination for ethnic nations was not mentioned in the covenant, and at the Versailles conference self-determination for ethnic nations was only applied to some of the territories of the defeated states in World War I.¹⁸ Overall, recognition of the territorial boundaries of juridical states gained significant support in post-World War I settlements.

Following the World War I peace settlements, the territorial integrity norm was supported in several multilateral declarations and treaties. The 1928 General Treaty for the Renunciation of War (better known as the Kellogg-Briand Pact) certainly included support for the prohibition against territorial aggressions, although it did not explicitly focus on territorial aggrandizement.¹⁹ The norm was then directly supported by the League's backing for the Stimson Doctrine in 1931, which denied the legitimacy of territorial changes obtained by force.²⁰

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At the end of World War II the Western Allied Powers exhibited very strong support for the integrity of interstate boundaries. With one exception they did not request or obtain sovereignty over any territories that belonged to the defeated powers, although they did obtain some UN Trust Territories that were formerly colonies of Japan and Italy and that they were obliged to bring to independence. The exception was the right of the United States to maintain control over some of the Pacific islands that formerly belonged to Japan.²¹ The same approach toward territorial gains, however, was not true for the Soviet Union, which continued to operate with a classical view of boundaries, namely, that the victors in wars could claim territorial spoils. The Baltic states were integrated into the Soviet Union by Stalin against the wishes of their populations and without the recognition of major Western powers. The

¹⁸ Franck 1990, 154–62.

¹⁹ Korman 1996, 192–99.

²⁰ Stimson and Bundy 1948, 227–60.

²¹ See Korman 1996, 176; and Claude 1964, 339–40.

Soviet Union also absorbed parts of Poland, Germany, Finland, Rumania, the southern half of Japan's Sakhalin Island, and Japan's Kurile Islands. In addition, the territory of postwar Germany was realigned and reduced. These changes were clearly reminiscent of the outcomes of wars in earlier centuries, but they were the last major diplomatic developments in Europe that blatantly defied the consent principle in the determination of international boundaries.²² Finally, despite most countries' accession to the territorial gains of the Soviet Union, all countries at the 1945 San Francisco conference acceded to the obligation to respect existing boundaries in the 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."²³

THE EVOLUTION OF THE TERRITORIAL INTEGRITY NORM SINCE 1945

General Legal and Declaratory Developments

The UN Charter of 1945, as noted, affirmed states' obligation not to use force to alter states' boundaries. This same respect for the borders of juridical entities influenced the UN's approach to de-colonization. The colonial territory, which was often artificial in terms of delimiting ethnic nations, became the frame of reference for *** responding to claims for self-determination and political independence.²⁴ The 1960 UN Declaration on Granting Independence to Colonial Countries and Peoples made clear that it was existing colonies, and not ethnic groups, that were eligible for independence. Concerning "dependent peoples," it stated that "the integrity of their national territory shall be respected." It then proclaimed that "any attempt aimed at the partial or total disruption of the national unity or territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."²⁵ In 1970 the UN General Assembly approved a comparable normative

²² Korman 1996, 161–78. The new German-Polish border subsequently acquired legitimacy. The need to recognize this border was made abundantly clear to Chancellor Helmut Kohl by Germany's Western allies in 1990 when he voiced a desire to relocate the border; Fritsch-Bournazel 1992, 102–11.

²³ Article 2 (4). On debates over whether the UN prohibition allows any exceptions, see Korman 1996, 199–229.

²⁴ Jackson 1993.

²⁵ Declaration on Granting of Independence to Colonial Countries and Peoples, UNGA res. 1514, 1960.

statement in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States.²⁶ There is clearly no ambiguity as to whether these major UN declarations supported respect for the territorial integrity of juridical states and existing colonies. To quote Michael Barnett and Martha Finnemore, “The UN encouraged the acceptance of *the norm of sovereignty-as-territorial-integrity* through resolutions, monitoring devices, commissions, and one famous peacekeeping episode in the Congo in the 1960s.”²⁷

Apart from reviewing UN normative statements, it is important to look at developments relating to respect for international boundaries in several regional organizations. The charters of the Arab League and Organization of American States, which were approved in 1945 and 1948, respectively, contained provisions supportive of the territorial integrity of member states, but the issue was not highlighted by the founding member states.²⁸ Several decades afterwards, however, the Organization of African Unity (OAU) and the Conference on Security and Cooperation in Europe (CSCE) adopted strong and well-publicized stands in favor of the sanctity of existing state boundaries. The 1963 OAU Charter contains a strong article in support of territorial integrity (Article 3). *** In 1975 the CSCE reiterated the same principle in the Helsinki Final Act: “Frontiers can [only] be changed, in accordance with international law, by peaceful means and by agreement.” Separate bilateral treaties between West Germany and its major Communist neighbors (East Germany, Poland, and the Soviet Union) that preceded and anticipated the Helsinki agreements committed the parties to “respect without restriction the territorial integrity” of each state and “reaffirm[ed] the inviolability of existing boundaries.”²⁹ At the end of the Cold War the 1990 Charter of Paris for a New Europe reiterated exactly the same principle, as have all subsequent conferences concerning international boundaries, including the 1995 Dayton peace treaty that settled the wars in Croatia and Bosnia-Herzegovina.^{30***}

One other development should be noted with regard to attitudes and practices within Europe and the Western community more generally. In

²⁶ Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States, UNGA res. 2625, 1970.

²⁷ Barnett and Finnemore 1999, 713 (italics in original).

²⁸ Zacher 1979, 189, 165.

²⁹ Maresca 1985, 86–87.

³⁰ See Ullman 1996; and Holbrooke 1998. The Dayton Agreement can be found at (<http://www1.umn.edu/humanrts/icty/dayton>). See particularly Articles 1 and 10.

the 1990s both the European Union (EU) and NATO proclaimed that all new members must have accords with contiguous states as to their borders. This has necessitated that the East European countries aspiring to membership sign boundary treaties with their neighboring states – sometimes at the cost of sacrificing long-held dreams of absorbing parts of these neighboring countries.³¹ ***

The fifteen successor states of the Soviet Union have also followed the Western countries in supporting their existing boundaries. The Commonwealth of Independent States (CIS) has supported the principle of territorial integrity in their main constitutional documents. In part their support for the territorial integrity norm is attributable to pressure from the Western countries, especially through the Organization for Security and Cooperation in Europe (OSCE), but the great majority of these countries have recognized that respect for inherited boundaries (the principle of *uti possidetis*) is in their mutual interest.³²

Territorial Aggressions Since 1946: International Responses and Outcomes

Prior to discussing the patterns of territorial wars in the post-1945 period I review some data on territorial wars since the seventeenth century because they highlight the marked changes in international practices in the late twentieth century. Table 12.1 contains data on international territorial wars for five historical eras in international relations over the past three and a half centuries and seven half-century periods. The five historical eras are frequently used in historical analyses of the interstate system. They are also employed by Kalevi Holsti from whose book this chapter has drawn the list of wars for the period 1648–1945. The wars listed by Holsti are major military conflicts in “the European and global states system.”³³ He includes some civil wars, but they are excluded from the conflicts examined here. Of the 119 interstate wars between 1648 and 1945, 93 were judged to be territorial wars in that Holsti classified them as being concerned with six issues that clearly involve state control over territory.³⁴ The list is not exhaustive of all territorial aggressions or wars, but it is extensive enough to reveal important patterns.

³¹ Donald M. Blinken and Alfred H. Moses, Hungary-Romania Pact: Historic but Ignored, *The Daily Yomuri* (Tokyo), 21 September 1996, 11.

³² See MacFarlane 1999, 4; and Webber 1997.

³³ Holsti 1991, 20.

³⁴ See note to Table 12.1.

The list of forty “territorial aggressions” for the period 1946–2000 is drawn from extensive research in secondary materials. *** Territorial aggressions or wars include interstate armed conflicts where: a clear purpose of the military attack was the change of boundaries of a state or its colonies; the invading state sought to capture some territory from the attached state; *** the attacking states were widely recognized as sovereign states; and the invasion or occupation lasted at least a week. Using this definition clearly reduces the value of comparisons with the pre-1946 territorial wars, but the value of using a larger group of territorial aggressions for the recent period greatly assists our understanding of recent changes.³⁵

Several key patterns emerge from the data in Table 12.1. First, and most importantly, while approximately 80 percent of territorial wars led to redistributions of territory for all periods prior to 1945, this figure dropped to 30 percent after 1945. Second, the number of territorial redistributions per year (given our list of wars) has varied by time period. It was about 0.24 from 1648 to 1814; it dropped to 0.19 between 1815 and 1917; it rose dramatically to 0.59 between 1918 and 1945; and then it dropped back to 0.22 in the post-1945 period.

In looking at the average territorial redistributions per year, it is valuable to take into consideration that a larger population of territorial conflicts is included in the 1946–2000 period than in other periods and, more importantly, that the number of states has increased dramatically over recent centuries – especially since 1945. A recent study provides data on the number of states (with certain characteristics) between 1816 and 1998, and it allows us to control for the number of states in the international system by calculating the number of territorial redistributions per country-year for particular periods of time. The figure for 1816–50 is 0.0032; for 1851–1900, 0.0035; for 1901–50, 0.0073; and 1951–98, 0.0015.³⁶ These

³⁵ The term “aggression” is more accurate than “war” for some of the conflicts since in a few cases the attacked state did not resist militarily and in some cases the number of deaths was small. However, such territorial occupations are often referred to as “wars” and therefore the terms “war” and “aggression” are used interchangeably.

³⁶ Gleditsch and Ward 1999. The authors include states that meet the following criteria: (1) they possessed autonomous administration over some territory; (2) they were regarded as distinct entities by local actors; and (3) they had a population over 250,000. The average number of states per year between 1816 and 1850 was 53.05; between 1851 and 1900, 56.70; between 1901 and 1950, 63.42; and between 1951 and 1998, 134.58. The total number of territorial redistributions for these four periods was 6, 10, 23, and 10, respectively. To determine the number of territorial redistributions per country-year for a particular period it is necessary to multiply the total number of years by the average number of countries per year and to divide this sum into the total number of redistributions for the period.

figures indicate, of course, that the number of territorial redistributions per country-year was more than twice as high in the nineteenth century than it was in the last half of the twentieth century. Also, it was almost five times higher in the first half of the twentieth century than in the second half. These figures have to be interpreted in light of the fact that the criteria for the inclusion of wars differs for the pre- and post-1945 years, and there is no claim of statistical significance.

The preceding figures do point to important changes in some patterns of territorial armed conflict. However, it is also crucial to look at post-1945 territorial wars (summarized in Table 12.2) in some detail since the development and management of these conflicts reveal a great deal about the strengthening of the norm. ***

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It is clear that there have been very few cases of coercive boundary change in the last half century during which UN membership has grown from 50 to 190. No longer is territorial aggrandizement the dominant motif of interstate politics; whereas in the three centuries leading up to 1946, about 80 percent of all interstate territorial wars led to territorial redistributions, for the period 1946–2000, the figure is 30 percent (twelve out of forty) (Table 12.1a). Given the huge increase in the number of states in the international system in the past half century and our definition of territorial wars for the period, the absolute numbers of forty territorial wars and twelve cases of major boundary change are not very large by historical standards. Two of the successful uses of force involved turbulent decolonization processes in 1947 and 1948 in the Indian subcontinent and former British Palestine, and the other ten occurred between 1961 and 1975. Of these ten wars, the UN passed resolutions calling for withdrawal in four of them (Israel-Arab states in 1967, India-Pakistan in 1971, Turkey-Cyprus in 1974, and Morocco-Spanish Sahara in 1975). Another three of the ten (India-Portugal in 1961, Indonesia-Netherlands in 1961–62, and North Vietnam-South Vietnam from 1962 to 1975) were viewed by many countries as stages of the decolonization process. The remaining two involved China's occupation of remote areas—parts of northern India in 1962 and South Vietnam's Paracel Islands in 1974.

An interesting characteristic of territorial wars concerns the role of international organizations in bringing them to an end, since multi-lateral responses often reflect broad international backing for the norm. In the four territorial wars in Europe (except for the quick war

TABLE 1.2.2. *Interstate Territorial Aggressions, 1946-2000*

States involved	Issue	Outcome	Change
Europe Turkey-Cyprus, 1974-present	Turkey invaded Cyprus to protect the Turkish Cypriot community. It gathered all Turkish Cypriots into the northern 40 percent of the island. In 1983 Turkey supported the creation of the Turkish Republic of Northern Cyprus (TRNC). Turkish troops remain in the TRNC.	The UN and NATO opposed the invasion and recognition of the TRNC. Western and UN attempts to negotiate a settlement based on a federation of the two sections of the island have failed. Only Turkey recognizes the TRNC.	Major change
Yugoslavia-Slovenia, 1991	Yugoslavia's armed forces attacked to try to reverse Slovenia's departure from the federation after Slovenia declared independence on 25 June 1991.	Yugoslavia ceased its attack after eight days of fighting and withdrew from Slovenia.	No change
Yugoslavia-Croatia, 1991-95	Croatia declared independence in 1991. Yugoslavia (Serbia-Montenegro) sent troops to assist Serbs in Croatia (12 percent of pop.) who wanted to attach their areas to Yugoslavia. Most Serb troops defending Serb enclaves came from Croatia, but some came from Yugoslavia.	UN called for withdrawal of foreign troops and a cease-fire. Fighting killed 15,000. Main Serb force was defeated in 1995. Dayton accord in 1995 recognized former boundary. Yugoslavia and Croatia recognized boundary in bilateral treaty in August 1996.	No change
Yugoslavia-Bosnia, 1992-95	Bosnia declared independence in 1992. Serb population of Bosnia (assisted by Yugoslav military) fought against an alliance of Bosnian Muslims and Bosnian Croats. The Serb forces wanted to unite parts of Bosnia with Yugoslavia. The Croatian army intervened at times, and in a few instances it fought Muslim forces.	UN called for withdrawal of non-Bosnian troops and cease-fire. The fighting killed 200,000. The 1995 Dayton accord created a multiethnic government and recognized the original boundaries of Bosnia-Herzegovina. Yugoslavia and Bosnia recognized boundary in bilateral treaty in October 1996.	No change

(continued)