

Territorial Disputes and Conflict Management

The art of avoiding war

Rongxing Guo



Security and Conflict Management

Territorial Disputes and Conflict Management

This book examines the problems of boundary demarcation and its impact on territorial disputes, and offers techniques to manage and resolve the resulting conflicts.

Historically, many interstate conflicts and wars have been directly related to boundary or territorial disputes. Cross-border discord directly affects the sustenance and welfare of local populations, often resulting in disease, impoverishment, and environmental damage as well as creating refugees. Although the impact of territorial disputes is great, they can often be settled through bilateral, and sometimes multilateral, agreements or international arbitration.

This book sets out to probe into the problems of existing techniques on boundary demarcation and to test their possible impacts on boundary and territorial disputes. Various factors and their influences on cross-border tensions are tested, either qualitatively or quantitatively. After close examination of dozens of the most significant cases, the book presents various alternative solutions to the achievement of cross-border cooperation in disputed territories. An 'art of avoiding war' is included within the book, comprising six key schemes and five negotiating techniques. The comparative advantages, costs and benefits of each of these are analyzed and evaluated.

This book will help guide practitioners in territorial disputes and will be of interest to students of conflict management, international security, peace and conflict studies, political violence and IR in general.

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The art of avoiding war

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This book is dedicated to my wife (Yuhui), my brother (Rongxun) and sister (Rongmei) from whom I have learnt how to avoid wars within a family

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Rongxing Guo

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Beijing (final draft, on the 7–7 day of the Tiger year)

Notes on the text

- 1 In most circumstances, names of states and organizations, when they appear together in the text, are organized in alphabetical order.
- 2 If two or more names are used for a territory (or geographical place or position) that is claimed by different states, in order to maintain neutrality, I will use all these names concurrently (usually organized in alphabetical order).
- 3 The maps included in this book are adopted only for illustrative purposes; they should not be applied in formal treaties or other legal documents. If the reader requires more accurate maps, the services of a competent professional person or agency should be sought.
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Abbreviations

ASEAN	Association of Southeast Asian Nations
CIA	Central Intelligence Agency
CPA	Comprehensive Peace Agreement
DMZ	demilitarized zone
EEZ	exclusive economic zone
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ILA	International Law Association
LAC	Line of Actual Control
LMB	Lower Mekong Basin
MDL	military demarcation line
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NEFA	North East Frontier Agency
NGO	non-governmental organization
NLL	Northern Limit Line
PCA	Permanent Court of Arbitration
PLA	Chinese People's Liberation Army
PLO	Palestinian Liberation Organization
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNMIK	United Nations Mission Interim in Kosovo
UNSC	United Nations Security Council
USSR	Union of Soviet Socialist Republics
WHS	World Heritage Site

Introduction

In the practical art of war, the best thing of all is to take the enemy's country whole and intact; to shatter and destroy it is not so good. So, too, it is better to recapture an army entire than to destroy it, to capture a regiment, a detachment or a company entire than to destroy them. Hence to fight and conquer in all your battles is not supreme excellence; supreme excellence consists in breaking the enemy's resistance without fighting.

The Art of War (3:1–2)

Historically, many interstate conflicts and wars have been directly related to boundary or territorial disputes.¹ For example, there have been numerous border wars and border-based ethnic clashes in Africa. In Asia, China was involved in at least three border wars with India (in 1962), the former USSR (in 1969), and Vietnam (in 1979, 1984 and 1987) during the Cold War era. In Latin America and the Caribbean region, war broke out over territorial issues in 1969 between El Salvador and Honduras (although this war was also strongly motivated by a dispute over interstate migration), in 1982 between Argentina and the United Kingdom, and in 1941 and 1995 between Ecuador and Peru. The next most severe disputes, short of war, also featured boundary and territorial causes: near-war between Argentina and Chile in 1902 and 1978; in the late 1970s tense relations between Chile, on the one hand, and Bolivia and Peru, on the other hand; and the sporadic clashes across the Colombia–Venezuela border since the 1980s.²

The term “territorial dispute” refers to the disagreement over a piece of territory that is claimed by two or more independent countries. More specifically, a territorial dispute exists between two or more states when “at least one government does not accept the definition of where the boundary line of its border with another country is currently located, whereas the neighboring government takes the position that the existing boundary line is the legal border between the two countries based on a previously signed treaty or document” (Huth, 1998, p. 19). Literally, “boundary disputes” (conflicts over how to draw border lines) and “territorial disputes” (conflicts over larger tracts of land or water) are different terms. In practice, however, they do not have so many differences from each

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other, as all territorial-related disputes have resulted – directly or indirectly – from the disputes over various political boundaries – land, water, or even air.³

Boundary and territorial disputes may evolve from historical claims, or they may be brought on by competition of resource exploitation. Ethnic clashes continue to be responsible for much of the territorial fragmentation around the world. Disputes over islands at sea or in rivers frequently form the source of territorial and boundary conflicts. Other sources of contention include access to water and mineral (especially petroleum) resources, fisheries, and arable land. Issues pertaining to the territorial control of sea areas have long been the subject of international law.

There are significant differences in terms of the creation and success of institutions that are adopted to manage natural and environmental resources in cross-border areas. For example, Europe has had longstanding international organizations to oversee the Danube and the Rhine rivers, and North America has seen about a century of bilateral US–Canadian and US–Mexican institutions for the management of cross-border water resources. However, there has been little success in the cross-border management of the rivers in the Middle East and South Asia. Even in water-rich river basins, low water flow during droughts may turn into a dispute between riparians with storage capacity.⁴ The “Helsinki Rules on the Uses of the Waters of International Rivers” (which is an international guideline regulating how rivers and their connected groundwaters that cross national boundaries may be used) was adopted by the International Law Association (ILA) in Helsinki, Finland in August 1966; and the “Convention on the Law of Non-Navigational Uses of International Watercourses” (pertaining to the uses and conservation of all waters that cross international boundaries, including both surface and groundwater) is a document adopted by the United Nations on May 21, 1997. However, there is still a lack of the formal status of the Rules and of the ratification of the Convention.

Although there are some generally accepted rules of land boundary demarcation and of extension of territorial sea limits, competition over the exploitation of scarce underground and marine resources has generated a number of interstate disputes around the globe. On December 10, 1982, the United Nations Convention on the Law of the Sea (UNCLOS) was opened for signature in Montego Bay, Jamaica, and entered into force on November 16, 1994. However, as of 2010, several states out of 159 original signatories have yet to ratify the UNCLOS; and certain coastal states have not yet stated that their maritime boundaries are determined by the UNCLOS principles.⁵ Even in the signatory states, there are still cases in which different UNCLOS principles are applied by neighboring states in their respective claims over the joint (disputed) marine resources.

Boundary and territorial disputes may vary in intensity – from managed or dormant to violent or militarized forms. In all cases, cross-border discord directly affects the sustenance and welfare of local populations. When a border war occurs, it often leaves the world community to cope with resultant refugees, disease, impoverishment and environmental degradation. It should be noted that,

even though boundary and territorial disputes have high stakes, it is still possible for many states in dispute to cooperate with each other so that further cross-border conflicts can be avoided. According to a study conducted by Allee and Huth (2006, p. 14), approximately half of the world's existing territorial disputes have been settled through bilateral (sometimes multilateral) agreements or international arbitration, usually involving concessions by one or more of the contesting states.

About 2,500 years ago, Sun Tzu (544–496 BC) wrote a book entitled *The Art of War* (sunzi bingfa). In contrast to Sun's military treatise that has long been revered as the definitive guide to strategy and tactics on the battlefield, this is intended to provide a guide to the cessation of international hostilities and conflicts. Specifically, the present book focuses on international disputes over both land territories and water bodies that have been claimed by widely recognized countries. These disputes include both military disputes and territorial claims that will likely lead to military disputes at a later stage.

Structurally, this book contains five chapters, which are organized as follows.

Chapter 1 introduces some basic concepts relating to boundary and territorial disputes. Following a narrative on the maritime boundary dispute in the Yellow Sea, this chapter reviews various techniques on boundary demarcation. It then identifies existing common errors in boundary description as well as their influences on the evolution of the boundary territorial disputes throughout the world. This is intended to provide details about *where and when territorial disputes might potentially occur and how they can be technically averted*.

Using ten case studies differing in geographical, political, economic and cultural backgrounds, Chapter 2 sets out to test the multivariate determinants of territorial disputes and cross-border wars. To this end, I classify various conditions and circumstances under which boundary and territorial disputes could evolve from dormancy to activation. Specifically, I analyze five individual factors – resource scarcity, locational feature, domestic politics, geopolitical competition and cultural difference – and how they have decisively influenced the cross-border tensions in the disputed territories throughout the world.

Chapter 3 provides details about how states have coped with their boundary and territorial disputes in order to minimize or reduce the risk of conflicts and wars. Specifically, six dispute-settlement schemes (i.e. fair division scheme, joint management scheme, international peace park, neutral zone, buffer zone and demilitarized zone) can be applied to the effective resolution of territorial disputes and cross-border resource management. The characteristics of these schemes are clarified, and the case studies in which each scheme has been successfully applied are briefly narrated. In the last section, the advantages and disadvantages of the six schemes are compared.

In order to help policymakers and practitioners reach an agreement on territorial dispute settlement, Chapter 4 presents five settlement-negotiating mechanisms (or techniques or styles), which are round table talk, third-party mediation, international arbitration, litigation at international court and shelving disputes strategy. The case studies in which each negotiating technique has been

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successfully applied are briefly narrated and reviewed. A qualitative cost–benefit comparison of these negotiating techniques is conducted in the last section.

Finally, in Chapter 5, a step-by-step flowchart is suggested for policymakers and practitioners involved in international boundary and territorial disputes. It provides a roadmap for national and local governments to achieve peace, stability and cross-border economic cooperation in international disputed areas.

At the end of each chapter, there is an appendix. These appendixes are designed to present data and information relating to existing international boundary and territorial disputes (Appendixes I and II-1), various technical and methodological details about the prevention and resolution of international border and territorial disputes (Appendixes II-2 and III), as well as a description of how the International Court of Justice (ICJ) works (Appendix IV) and a list of selected laws, treaties and documents relating to wars (Appendix V).

A classic work on Confucianism, *The Great Learning* (daxue) consists of a short main text and ten following commentary chapters, with the main idea being educating people on how to conduct self-cultivation and to reach the realm of the highest good in feudal ethics of Confucianism. In the book, the thoughts on “self cultivation, family regulation, state governing, and peace seeking in the whole world” were seen as a golden rule for a state leader’s moral cultivation. The main text reads:

The ancients who wished to illustrate illustrious virtue throughout the world, first ordered well their own states. Wishing to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated their persons. Wishing to cultivate their persons, they first rectified their hearts. Wishing to rectify their hearts, they first sought to be sincere in their thoughts. Wishing to be sincere in their thoughts, they first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things. Things being investigated, knowledge became complete. Their knowledge being complete, their thoughts were sincere. Their thoughts being sincere, their hearts were then rectified. Their hearts being rectified, their persons were cultivated. Their persons being cultivated, their families were regulated. Their families being regulated, their states were rightly governed. Their states being rightly governed, the entire world was at peace.

Indeed, avoiding war is not an easy task. And it needs more wisdom than winning a war. Nevertheless, if all political leaders are able to cultivate their minds and devote themselves to the process of avoiding wars, we certainly will find that the entire world will be at peace.

1 Boundary, territory and war

Throughout history, physical terrain, political fiat and conquest have divided the world into independent states and political entities. The result is the man-made and sometimes arbitrary or even imposed boundaries. Until now, there have been over 300 international land boundaries, which stretch over 250,000 km, and separate over 200 independent states and dependencies, areas of special sovereignty, and other miscellaneous entities of the world. At the same time, maritime states have claimed limit lines and have so far established over 100 maritime boundaries and joint development zones to allocate ocean resources and to provide for national security at sea.¹

However, not all of these political boundaries have worked well. Some disputed boundaries and cross-border areas may even evolve into the theaters of bloody fights and wars between antagonistic states. Below is just one case of the peril-of-proximity situation.

1.1 Good boundary, bad boundary

On March 26, 2010, a South Korean Pohang-class warship, ROKS *Cheonan* (PCC-772), exploded and sank in the Yellow Sea (called “West Sea” in both North and South Korea). The incident once again moved the world’s attention toward the troublesome Korean peninsula.

The ship started sinking around 9:30 p.m. local time, after an explosion at the rear end. The 1,500-ton ship carrying more than 100 crew members went down around 9:45 p.m. near Baengnyeong Island in the Yellow Sea. Only 58 crew members were rescued. The incident has been the worst peacetime naval disaster in Korea’s history. The complete picture of the sinking still remains unknown, but South Korea believed that the ship suffered a torpedo attack from North Korea. According to a report released by the Yonhap News Agency (2010), “Seoul’s Navy officials refused to give details, but said a South Korean vessel fired at a ship toward the North later in the evening, indicating a possible torpedo attack from the North. Local residents reported having heard gunfire for about 10 minutes from 11 p.m.”.

The Northern Limit Line or North Limit Line (NLL) is a disputed maritime demarcation line between North and South Korea in the Yellow Sea. At present,

it acts as the de facto maritime boundary between the two Koreas. The line was unilaterally set by the US-led United Nations military forces on August 30, 1953 after the United Nations Command and North Korea failed to reach an agreement. The line extends into the sea from the Military Demarcation Line (MDL) on the Korean peninsula. It continues to run between the mainland portion of Gyeonggi-do (province) of North Korea that had been part of Hwanghae-do (province) of South Korea before 1945, and the adjacent offshore islands, the largest of which is Baengnyeong. When the mainland portion of Gyeonggi-do reverted to North Korean control in 1945, most of the islands still remained a part of South Korea (Figure 1.1).

Though not claiming all these offshore islands along the NLL, North Korea has never accepted the effectiveness of the NLL, insisting on a border far south of the line that cuts deep into waters currently patrolled by the South Korean navy. In 1977, North Korea attempted to establish a 90km military boundary zone around the islands controlled by South Korea. In 1999, North Korea claimed a “maritime military demarcation line”, which is located far south of the islands. In addition, North Korea has set up two “security zones” in which South Korean ships are allowed to sail across the disputed area (Figure 1.1). North

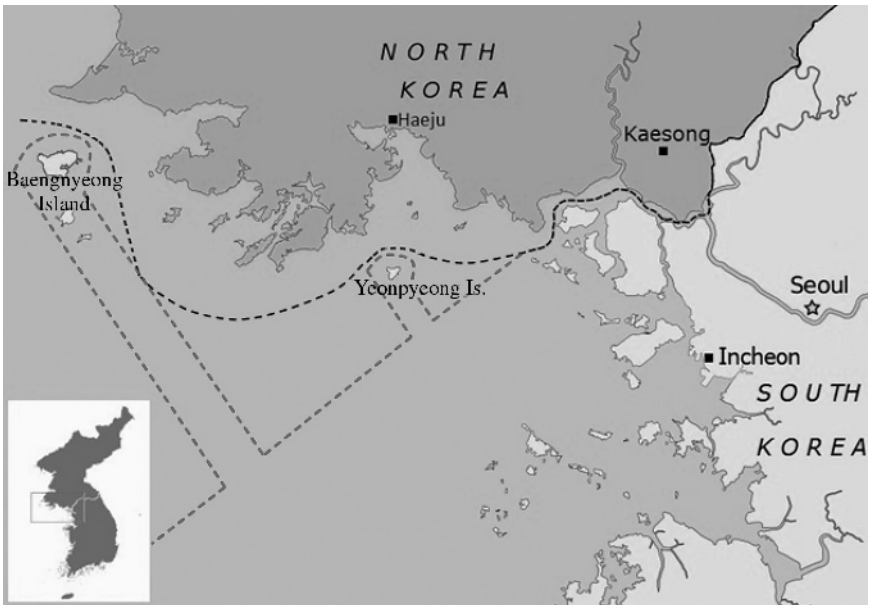


Figure 1.1 The disputed inter-Korean maritime boundaries in the Yellow Sea (copyright © 2010 by Rongxing Guo).

Notes

- 1 The northern dotted line, set by the US-led UN army in 1953, is the so called Northern Limit Line (NLL).
- 2 The southern dotted line, or called “maritime military demarcation line,” was set by North Korea in 1999.

Korea has proclaimed that it would not guarantee security for any ships coming into waters beyond these two zones. However, South Korea does not recognize this arrangement, insisting that the NLL is the only legal inter-Korean maritime boundary in the Yellow Sea.

Military clashes in the disputed waters of the Yellow Sea have occurred since the 1950s, especially during the crab fishing season – a period during which skirmishes have often resulted in casualties on both sides. Major incidents that have occurred around the NLL since the 1970s are reported as follows:²

On June 5, 1970, a South Korean navy's "1-2" ship was fired on and sunk by North Korea's naval vessels in the Yellow Sea, with 20 South Korean soldiers being killed.

In June 1997, a North Korean and a South Korean patrol boat exchanged fire in the Yellow Sea, with no casualties.

On November 20, 1998, a South Korean navy ship fired warning shots at a North Korean warship. On December 18, a North Korean vessel sank near the NLL after being hit by a South Korean navy ship.

From June 9 to 11, 1999, there were three cases of inter-Korean naval conflicts near the NLL. On June 15, North and South Korean warships fought each other, with several North Korean sailors being killed, and a North Korean warship sank and several others were damaged after being hit by artillery shells.

On June 28, 2002, two North Korean navy patrol boats crossed the NLL. As South Korean navy ships approached, the North and South Koreans opened fire. After exchanging fire, both North Korean ships moved back across the NLL. One of the North Korean ships was seen to be heavily damaged and on fire. Six South Korean sailors were killed and 18 wounded during the exchange of fire. It is estimated that the North Korean sailors also suffered more than 30 casualties. A disabled South Korean ship sank while being towed back to shore. On November 16, the South Korean navy fired warning shots at a North Korean patrol boat that crossed a disputed sea border into southern waters. The North Korean boat retreated to North Korean waters without returning fire. A similar incident occurred five days later on November 20.

On November 1, 2004, South Korea's patrol boats fired on North Korean naval vessels after the latter crossed the disputed maritime boundary (that is, the NLL) in the Yellow Sea. This incident came the same day that South Korea took full responsibility for guarding its side of the Demilitarized Zone (DMZ).³ The United States withdrew its troops from the border, ending patrols there that dated back to 1953, when the Korean War ended with an armistice.