Territorial Integrity as an Etiquette of Thieves: Non-Conquest in 19th-Century Imperialism

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Abstract

In the contemporary era, territorial conquest has been seen as illegitimate and has taken place only in limited ways. According to an influential narrative in scholarship and public debate, this "territorial integrity norm" is a product of the post-WWII international order, and contrasts with the nineteenth century, when conquest was normalized and "might made right." This essay argues, however, that nineteenth-century European international law imposed meaningful limitations on conquest, such as "territorial inviolability." These limitations were more effective in the colonized world than in Europe, primarily because national irredentism was not thought relevant outside Europe. Europeans' denial of non-European sovereignty contrasted with their respect for European-established colonial boundaries, and they did not fight over colonial territory between 1815 and 1914. I demonstrate the strength of this "etiquette of thieves" by examining two events where territorial conflict between colonial powers was closely avoided: the Panjdeh (1885) and Fashoda (1898) incidents. Viewing territorial integrity as qualitatively changing, rather than absent at one time and present later, has important implications for discussions of how recent conquests, such as those of Russia in Ukraine, will impact on the principle of territorial integrity. In particular, territorial integrity may be more likely to be altered in how it is applied than eroded altogether. A specific form of territorial integrity is an integral part of the post-WWII international order, but constraints on conquest as such need not be limited to that specific version of territorial integrity.

We are living through a watershed era. … The issue at the heart of this is whether power is allowed to prevail over the law. Whether we permit Putin to turn back the clock to the nineteenth century and the age of the great powers.[1]
—Olaf Scholz, 2022

History will measure [Germany's] retribution [on France]…by the intensity of the crime of reviving, in the second half of the nineteenth century, *the policy of conquest!*[2]
—Karl Marx, 1870

For many observers, we stand now at a crossroads in history. A crucial pillar of the post-WWII order, the prohibition of territorial conquest—known as the territorial integrity principle—is at risk. Russia is engaged in a bloody war of conquest against Ukraine, while the US President has made threats to take over Canada, Gaza, Greenland, and the Panama Canal.[3] It appears that what supporters of the current international order do next, whether it includes military support for Ukraine, international legal innovations, or other policies, will have an impact on whether or not the principle of territorial integrity can be maintained much longer. Failing to respond appropriately might encourage China to invade Taiwan, and Russia may "grab northern Kazakhstan" or "formally annex Belarus."[4]

These considerations rely on particular ideas of how the territorial integrity principle developed historically. Often, as in Olaf Scholz's formulation above, the post-war era of territorial integrity is contrasted with a nineteenth-century era of relative violence and international anarchy, or as Angela Merkel put it, when she made a similar historical analogy after the Russian annexation of Crimea, "the law of the jungle."[5] Scholz's historical narrative, which helped enact a "180-degree course correction" in remilitarizing German policy, has been echoed in different ways by scholars.[6] Before the twentieth century, Hathaway and Shapiro argue, the "Old World Order" was based on the principle of "might makes right."[7] For Hathaway, Donald Trump and his supporters are trying to hasten the return of a world in which "states could use force free of modern constraints."[8] Fazal describes the war in Ukraine as "anachronistic" and "reminiscent of a more violent era," signalling that "the norm against territorial conquest" could end up as "another casualty of this war."[9]

Contrary to the assumptions of Scholz and many others, this essay argues that during the nineteenth century, power did not simply prevail over law. Instead, conquest was restrained by international law and order, but not in the same way as it is today. While European empires subjugated non-European peoples with brutal violence, they observed an "etiquette of

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[1] Scholz 2022.
[2] Quoted in Korman 1996, 92.
[3] Fazal 2022; Brunk and Hakimi 2022; Hathaway 2024.
[4] Lo 2023; see also Aksoy et al 2024.
[5] Wagstyl 2014.
[6] Wintour 2022.
[7] Hathaway and Shapiro 2017b.
[8] Hathaway 2024b.
[9] Fazal 2022.

thieves" among themselves, conquering no colonial territory from each other between 1815 and 1914. This etiquette derived initially from the Concert of Europe, based on a largely shared recognition of certain powers as charged with status and responsibility for upholding order. Within Europe, national liberation movements were one of the major reasons conquest nevertheless remained an important feature of international politics, but in the colonies, Europeans lacked such systematic justifications for revising inter-colonial boundaries by force. Then, over the course of the century, ideologies of civilization and free trade increasingly informed Europeans' largely agreed notions of who possessed status and authority, and for what purpose, contributing to inter-colonial cooperation despite the resurgence of imperial rivalries. The idea of "civilization" deeply structured social, legal, and political relations in the colonies into a double standard, entailing law and order between Europeans on the one hand, and European domination of non-Europeans on the other. For these reasons, the nineteenth century differed from the eighteenth: war did not start in the colonies and spread to Europe. In 1914, war started in Europe and, despite the best efforts of many imperial officials, spread to the colonies.

This essay contributes to the territorial integrity literature firstly by revising the scholarly "consensus," as Goertz et al. put it, that the territorial integrity norm "did not exist prior to World War I."[10] This literature deals with the period before the norm in limited and varied ways, as it is mainly concerned with the norm's effects, rather than causes, but its tendency is to deny any effective constraints on conquest before WWI.[11] But moreover, this essay expands discussions of the historical trajectory of constraints on conquest beyond certain limitations imposed by conceiving of them in terms of a "norm" rather than, for example, in terms of institutions or concepts.[12] Norms, following Finnemore and Sikkink, are "single standards of behavior" and clearly distinct from institutions, which "emphasize the way in which behavioral rules are structured together and interrelate."[13] Defined this way, a norm is more stable and more amenable to clear definition than an institution, which develops in complex ways historically. Zacher is clear and consistent that the "territorial integrity norm" means precisely "the proscription that force should not be used to alter interstate boundaries."[14] Others allow more nuance but maintain a core norm prohibiting annexation-by-conquest, distinguishing this core from a periphery of debatable offences.[15]

But this narrow focus on annexation-by-conquest as such risks leaving the picture very much incomplete. To begin with, it sits uneasily with international law, according to which territorial integrity "requires more than protection against permanent changes to borders, but

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[10] Goertz et al 2016, 106.

[11] Atzili (2012, 19): "the idea of border fixity had no real political manifestation until the twentieth century." For Fazal (2007, 171), pre-1945 treaties "were more likely to institutionalize conquest than to prevent it." See also Zacher 2001, 217.

[12] Although see Fabry 2002; Kornprobst 2002; O'Mahoney 2018; Elden 2006. Still, these scholars leave intact the contention that any relevant anti-conquest notions that may have existed before WWI had no real political manifestation.

[13] Finnemore and Sikkink (1998, 891) themselves caution against abstracting norms from institutions, and envision "norm language" as a way of "looking inside social institutions."

[14] Zacher 2001, 215.

[15] Fazal (2007, 48) notes that for Woodrow Wilson, only annexations-by-conquest—not occupations or regime changes—violated "territorial integrity."

demands protection against all sorts of interventions into a state's territory from the outside."[16] Abstracting the rule against annexation-by-conquest from the broader legal context has strong political implications; doing so was central to the USA's strategy for legitimating its conquest (but not annexation) of Iraq in 2003.[17]

Moreover, it can lead to an oversimplified, binary view of change over time. Focusing on a universal "norm" against annexation-by-conquest, it does appear that conquest became far more limited after 1945. The notion that territorial integrity replaced an earlier "law of the jungle," in turn, leaves open the possibility that territorial integrity could soon disappear entirely, as Russia conquers parts of Ukraine, and as the USA becomes less insistent on the non-recognition of conquered territory. But, as this essay shows, the difference between the nineteenth century and the post-1945 order was not that the latter is law-governed, while the former was ordered by mere force. In the former, law and force were ordered through a racialized conception of "civilization," which gave some stability to inter-imperial boundaries. By 1945, this was replaced with an absolute, universal, prohibition of conquest between states, while at the same time, as Fazal has argued, this has encouraged states such as the USA to engage in regime change.[18]

From this perspective, the question scholars should ask is not whether the principle of territorial integrity will give way to a purely lawless world but instead, how might recent events lead to changes in the way the prohibition of conquest is understood and applied? This is not to say that Russia's war of conquest, or the international response to it, will not change the global order. Instead, it is that to understand *how* it may change the global order, scholars need to distinguish between the specific, absolute prohibition of annexation-by-conquest and prohibitions of conquest more generally.

Observing an Absence of Conquest

Between 1815 and 1914, European states never conquered territory from each other's formally established colonies.[19] In the appendix I show in detail how a wide range of datasets and historical accounts confirm this claim. This absence of inter-colonial conquest from 1815-1914 contrasts with a significant frequency of conquest in Europe during that period. In fact, the territorial integrity norm literature typically cites observations of conquest regularly occurring at least until WWI.[20] For example, Zacher's data (Table 1) show conflicts redistributing territory as a relatively consistent feature of international politics from 1648 to 1945. Similarly, Table 2 shows that the 18 intra-European wars during 1815-1914, in Holsti's

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[16] Marxsen 2015. There is no clear support for singling out annexation-by-conquest as worse than invasion without annexation, or regime change, in the following: Charter of the United Nations; Declaration on Principles of International Law concerning Friendly Relations; Helsinki Final Act; Charter of the Organization of African Unity.

[17] Elden and Williams 2009.

[18] Fazal 2007, 173.

[19] "European states" are the participants in the post-Napoleonic Concert of Europe (which excluded the Ottoman Empire).

[20] Eg. Atzili, 26

reckoning, contrast with zero European inter-imperial wars. The Correlates of War Interstate Wars data show the same contrast.[21]

Table 1: Zacher's Data on Interstate Territorial Wars[22]

Period	Territorial Conflicts	Conflicts resulting in redistribution of territory
1648-1712	19	15
1713-1814	30	24
1815-1917	25	20
1918-1945	18	16
1946-2000	40	12

The absence of nineteenth-century inter-imperial conquest also contrasts with frequent wars over colonial territory in previous centuries. Holsti's data exclude 18th-century inter-colonial conflicts viewed as not fully linked to the European system, but they show a clear drop in "colonial competition" wars from 14% of wars between European entities (in 1715-1814) to 0% (in 1815-1914).[23] In the next section, then, I explain this absence of inter-imperial conquest.

Table 2: Holsti's Data on Wars and Major Armed Conflict[24]

	1648-1713	1715-1814	1815-1914
Number of wars	22	36	31
Number of colonial competition wars (% of all wars)	2 (9%)	4 (11%)	1 (1%)
Number of wars, adjusted to include only wars between European entities	15	29	18
Number of colonial competition wars, adjusted to include only wars between European entities (% of all wars between European entities)	2 (13%)	4 (14%)	0 (0%)

Origins of the Etiquette of Thieves

The argument of this essay is that the normative and legal institutions which legitimated the territorial claims of European empires in the nineteenth century, taken together as a whole, are the main factor explaining the absence of inter-imperial conquest. Some of these institutions belonged to the European states system in general, in particular, a generic anti-conquest principle, a practice of fixed linear boundaries, and a principle of territorial inviolability. At the same time, within Europe itself, there were countervailing principles that legitimated compromises to these rules, particularly national irredentism. But because national irredentism was not a factor in the colonial sphere, the anti-conquest institutions of the European states system were at their most effective in the colonies. Moreover, there were also factors specific to colonialism. The main purposes of colonialism, namely commerce and

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[21] During 1815-1914: 39 wars, 14 intra-European wars, 0 intra-European wars fought outside Europe.

[22] Zacher 2001, 218.

[23] Holsti 1991, 139.

[24] Holsti 1991.

civilization, were ideologically conceived such that there were good reasons to assume that war and conquest against Europeans would be self-defeating.

The Concert of Europe

In the aftermath of the Napoleonic Wars there emerged a club of great powers recognizing each other as possessing a collective right and responsibility to uphold a legitimate monarchical order.[25] No such mutual recognition of status had existed previously.[26] Despite this, scholars of the territorial integrity norm have argued that "a norm *permitting* territorial acquisition through conquest was in place for much of history prior to" WWI.[27] In doing so, they tend to rely heavily on the work of Sharon Korman. Yet Korman's text on the right of conquest in fact provides a good overview of the extent to which conquest was *prohibited* in European international law then.

Firstly, as Korman shows, the European Concert system, "(or the 'public law of Europe' as it was also known) raised a strong presumption against unilateral changes in the *status quo*."[28] This generic anti-conquest attitude has a long history, with roots in the Just War tradition, but it became institutionalized in the Concert system.[29] Even after the formal institutions of the Concert collapsed, great power congresses continued to regulate territorial changes multilaterally, at Paris in 1856 and Berlin in 1878—the latter of which changed and superseded a bilateral Russian-Ottoman peace.[30] Unlike the eighteenth century, when the great powers had met the partitions of Poland with resignation, they protested against Prussia's conquests in 1864 and 1871.[31] Such protests mattered: in 1871, Bismarck annexed Alsace-Lorraine only after arranging for France to invade Prussia first, with the effect that "In the opinion of the day, France, for purposes of conquest, had entered on an unjustified war of offense."[32] Even if some believed that states legally had an absolute right to initiate war without needing a justification, states typically acted as if justifications for war were necessary.[33]

Second, states possessed a legal right of territorial inviolability, which prohibits any hostile activity inside a foreign state's boundaries, including conquest.[34] International lawyers saw the *Caroline* case (1842) as the key moment at which territorial inviolability was recognized as an already established principle of customary law, in which the USA and Britain agreed that "Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization."[35] Linear boundaries also became widespread practice in

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[25] Schroeder 1986; Mitzen 2013; Lawson 2018.

[26] Holsti 1991, 94.

[27] Goertz et al 2016, 106; see also Zacher 2001, 217; Fazal 2007, 171; Atzili 2012, 228-9.

[28] Korman 1996, 80; Finnemore 2003, 121.

[29] Brown, Rengger, and Nardin 2002, 214.

[30] Holsti 1991, 198.

[31] Korman 1996, 77, 85, 91.

[32] Wambaugh 1920, 21. See also Lesaffer 2018.

[33] Brownlie 1963, 48.

[34] Phillimore 1854, 151; Twiss 1884, 257; Kent 1878, 303-306; De Martens 1858, 205; Wheaton 1855, 492-493.

[35] Korman 1996, 104.

Europe after 1815, and were globalized by the late nineteenth century.[36] Once a boundary is bilaterally agreed, revising it unilaterally is a breach of *pacta sunt servanda*, the fundamental principle that agreements are to be honored.[37] Lord Curzon, a prominent imperial expansionist, believed that the ongoing worldwide transformation of vague frontiers into precise boundaries was "undoubtedly a preventive of misunderstanding, a check to territorial cupidity, and an agency of peace."[38]

What, then, of the right of conquest? Many legal authorities denied its existence outright, at least as early as Pufendorf.[39] McMahon's survey of jurists shows that while Anglo-American jurists agreed on the existence of the right of conquest, continental jurists were divided evenly, and—despite state practice in several nineteenth-century wars—South American jurists almost unanimously rejected its existence.[40] Moreover, the right of conquest has often been substantially misunderstood in hindsight. It was not a blanket right *to initiate* conquest, as it has often been portrayed,[41] but only a right to authority over a territory *deriving from* having already conquered it, whether legally or illegally.[42] For example according to Phillimore in 1854, "Great jurists of all countries have passed sentence upon the partitions of Poland," which had become a classic case of illegal conquest.[43]

Restrictions on Inter-European Conquest More Effective in the Colonial Domain

In spite of these legal and moral ideals, however, many conquests took place during the nineteenth century.[44] Here Korman and the territorial integrity norm literature are in agreement, characterizing the nineteenth century overall this way because neither examines inter-colonial relations between Europeans in their own right. Instead, Korman concludes that colonialism demonstrates the continued relevance of the right of conquest in the nineteenth century.[45]

Colonialism of course involved the conquest of colonized peoples and the denial of their sovereignty. But to explain their usurpation of sovereignty from peoples they colonized, Europeans claimed non-Europeans were "barbarous" and Europeans "civilized." "Civilization" was a kind of status that built on the earlier forms of status that entitled the great powers to manage Europe as a Concert, but extending it to global dimensions, with an increased importance of cultural, religious, and racial affinity.[46] Europeans identified the international legal community with the community of civilized nations, throughout the century. It was expressed most clearly in the 1899 First Hague Convention, which built on

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[36] Goettlich 2019; Branch 2014.

[37] Korman 1996, 18.

[38] Curzon 1908, 48.

[39] Korman 1996, 94.

[40] McMahon 1940, 83.

[41] Eg. Goertz et al. 2016, 106.

[42] Korman 1996, 14.

[43] Phillimore 1854, 319.

[44] Korman 1996, 93.

[45] Korman 1996, ch. 2.

[46] Lawson 2018, 114.

"the principles of international law, as have resulted from the customs established between civilised nations," a formulation paralleled in many treaties of the era.[47] J.S. Mill believed that one could never "characterize any conduct whatever towards a barbarous people as a violation of the law of nations."[48] Relations among Europeans, then, would be based on a different standard of appropriate behavior than relations between Europeans and non-Europeans.[49] Acting on this double standard, Europeans, despite national antagonisms, exhibited what might be called an "etiquette of thieves," cooperating with rival Europeans while imposing their rule by force on non-Europeans.

The idea of the civilizing mission, entailing an improvement of colonial living conditions through law and order, technology, Christianity, and so on, came to provide the most systematic legitimization strategy for nineteenth-century colonialism.[50] For example, the British spent extensive resources on extremely precise triangulation surveys in India that had no clear purpose other than to demonstrate scientific capabilities, and legitimize colonial rule.[51] One reason this was crucial was that, particularly early in the century, the legitimacy and utility of colonies as such was disputed and doubted even among some of their major proponents.[52] Small European populations attempting to rule peoples they considered radically different from themselves were conscious of their need for legitimacy locally, but they also needed support from audiences at home. "Only by claiming that he was 'civilizing' Morocco" could French colonial general Hubert Lyautey, for instance, "sell colonial expansion to a French public skeptical of its value."[53]

The economic counterpart of "civilization," in Britain, and to some extent the other colonial powers, was the liberalization of trade. The rise of free-trade ideology, and decline of mercantilism, implied that in countries providing security and commercial freedom, influence could be more easily gained through economic means and informal empire than through conquest and direct administration.[54] This is what George Canning meant when he said, as Foreign Secretary in 1824, that Latin America, now independent from Spain, is "free, and if we do not mismanage our affairs sadly she is *English*."[55] New patterns of informal imperialism, for example in the Ottoman Empire and Siam, were less territorially exclusive, making territory *per se* less an object of struggle, especially before formal empires began to claim larger territories after 1880.[56] Informal imperialism could develop antagonisms, sometimes leading to one power taking more exclusive control, as Britain did in Egypt and France in Morocco, but this did not involve violation of inter-colonial boundaries.

The colonial domain was often thought particularly appropriate for new kinds of ambitious, civilized legal order, as in the *Caisse de la Dette* in Egypt and the Shanghai International

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[47] Grewe 2000, 446.
[48] Mill 2006, 257.
[49] Keene 2002; Suzuki 2009.
[50] Adas 1989, ch. 4.
[51] Edney 1997; see also Baber 1996.
[52] Pitts 2005; Chatterjee 2012, 64.
[53] Porch 1986, 394.
[54] Semmel 1970; Todd 2021; Gallagher and Robinson 1953.
[55] Gallagher and Robinson 1953, 8.
[56] Savage 2011.

Settlement.[57] The clearest effort to establish a legal territorial order was at the Berlin Conference of 1884-5.[58] Lawyers such as Émile de Laveleye who were prominent in the effort to codify international law worried that Europeans would bring to the Congo "their frontiers, their forts, their cannons, their soldiers, their rivalries and perhaps, one day, their hostilities."[59] This situation already lamentably existed in Europe, but "Must we reproduce this deplorable situation in the middle of Africa, and give the Negroes, whom we claim to civilize, the sad picture of our antagonisms and our quarrels?" The Berlin General Act, written under the influence of such lawyers, responded by committing signatories to the neutrality of territorial waters in the Congo Basin in the event of European war, and providing an option for powers to keep territories in much of Africa neutral. This was, as the General Act stated, "to give a new guarantee of security to trade and industry, and to encourage, by the maintenance of peace, the development of civilization…"[60]

The extent of legal force possessed by that neutralization, is best demonstrated by the effort by colonial officials and settlers, including Germans, Belgians, British, and Afrikaners, to stop WWI from spreading to Africa. In 1914, "In conformity with the general principles of the Berlin Act of 1885, the two main ports" of German East Africa "had no coast defences."[61] The governor "hated the idea of war and of the disruption of his work for the development of the Colony." While being invaded by Germany, Belgium ordered its forces not to attack the surrounding German colonies in an attempt to carry out the neutrality provision.[62] Similarly, the *East African Standard*, British Kenya's only daily newspaper, responded to the news of war by calling for African neutrality, arguing that "Whatever the national sentiments may be, the settlers of British East Africa and German East Africa must, during the crisis, continue to carry the white man's burden." For tiny European populations, war could incite colonial rebellion, and after both German and British East Africa had seen uprisings in 1905 they were conscious of their mutual interest in maintaining a racialized order. Colonial African neutrality failed, primarily because of opposition from London. But it demonstrates the extent of, and reasoning behind, not only the legal force of the Berlin Act, but more fundamentally a racist solidarity existing among European colonial officials and settlers, oriented towards a common civilizing mission.

If Europeans placed such a high value on "civilization," however, why was the absence of conquest it produced limited to the colonized world? The most important single reason was that, within Europe, civilization turned out to mean the achievement of nationhood.[63] Nationalism provided not only a vision of progress for each nation but also, in some versions, a "brotherhood of nations" that could cooperate in their collective self-determination.[64] But where political boundaries did not coincide with national populations, this conflicted with the post-Napoleonic peace imposed by the Concert of Europe, and provided a powerful way

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[57] Cong and Mégret 2021.

[58] Grewe 2000, 451; Craven 2015; Koskenniemi 2004, 121.

[59] Quoted in Moynier 1883.

[60] General Act of the Berlin Conference on West Africa, 1885.

[61] Hordern 1941, 54.

[62] Forster 1979, 78.

[63] Gong 1984, chs. 5-7.

[64] Duhé 2024.

to justify changing boundaries through war if necessary. For example, every time a new territory was annexed to the Kingdom of Italy, by force or otherwise, a plebiscite was held and considered essential to Italy's title to territory.[65] The nation-state was not the only motivation for war, but it did contribute to virtually every war in Europe.[66]

Europeans did not claim that this correspondence of national and political boundaries should extend to their colonial domains, let alone raise the possibility that most non-Europeans could form nation-states. They did develop emotional attachments to some of their colonies, but these attachments differed because colonies could never be a full part of the nation. Even the incorporation of Algeria into metropolitan France was a legal fiction and did not succeed in assimilating large numbers of Algerians into French society.[67] Settler colonists were liable to be depicted as having become uncivilized through their exposure to non-European cultures. British General Herbert Kitchener dismissed Boers, for example, as "uncivilized Afrikander savages with a thin white veneer."[68] One of the main justifications for war in Europe, then, did not apply outside Europe because of the perception that the rest of the world was in general composed not of nations but of semi-civilized and uncivilized peoples.

Finally, no European states with colonial rivalries fought wars during the nineteenth century, even for reasons unrelated to their colonial rivalries. This is a crucial permissive factor, and without it, it is unlikely that there would have been a complete absence of inter-colonial conquest. But it is not sufficient on its own for explaining why colonial rivalries did not trigger any wars between Europeans, as I explain in a separate section below.

One illustration of the fact that inter-colonial cooperation was based on mutual recognition of "civilized" status can be seen in the exclusion of the Ottoman Empire. Despite being an imperial power with its capital city on the European continent, it was not considered a participant in European civilization, largely because of its Muslim identity.[69] It was widely recognized as crucial to the European balance of power, having played a key role in the Napoleonic Wars, and with the great powers formally committing to the "territorial integrity" of the Ottoman Empire in 1856.[70] Yet Ottoman possessions in Africa and Europe were repeatedly taken by force by Europeans over the course of the nineteenth century. Those who were most in favor of preserving Ottoman territorial integrity recognized that this could only happen if the Ottoman Empire "civilized" itself along European lines.[71] As it became clear it would never satisfy Europeans with reforms, proponents of the European balance of power, such as Otto von Bismarck, favored dividing it up rather than forming balancing coalitions with it as in the Crimean War.[72] Liberal outrage at Ottoman atrocities against Christians made it difficult for Britain to intervene when Russian forces invaded in 1877, nearing Istanbul.[73]

[65] Wambaugh 1920, 58.

[66] Holsti 1991, 140-142.

[67] Belmessous 2013.

[68] Scheipers 2014, 885

[69] Neumann and Welsh 1991; Zarakol 2011, 115-125.

[70] Mitzen, 209.

[71] Anderson 1966, 182.

[72] Langer 1962, 102

[73] Anderson 1966, 184

The revival of the European Congress system in 1878 in Berlin then showed clearly the lack of recognition of Ottoman status, with the aftermath of the war largely being negotiated without its participation.[74]

"Territorial integrity," then, was in the nineteenth century not a right held in virtue of sovereign status but typically a policy of instrumentalizing "semi-civilized" polities towards preserving the balance of power, without recognizing them as active participants in it, and it was also applied to China in the Open Door Policy.[75] Through the 1932 Stimson Doctrine of non-recognition of conquered territory—originally intended as an attempt to enforce the Open Door Policy—and the League of Nations Covenant, it was the USA, not Europe, that was largely responsible for the emergence of today's universal principle of territorial integrity.[76]

Territorial Inviolability in Practice: Two Near-Misses

How can it be demonstrated that this is the right explanation? As there are no clear examples of inter-imperial conquest, the best way to demonstrate it is to examine the most important near misses, where war was a significant possibility, and the legal-normative framework was at its weakest. So below I examine the confrontation between Britain and Russia over Afghanistan in 1885, and between Britain and France in the Upper Nile in 1898. In an appendix, I also include a third case, between Britain and France in West Africa in 1898.[77]

In each case, I ask three questions to determine whether the process of dispute resolution is better characterized as one of pure coercion or one of respect for basic rules of "civilized" diplomacy, including territorial inviolability. First, did claims and counterclaims over territory suggest acknowledgement of a right of conquest, or recognition of existing agreements? If conquest was an accepted method of acquiring territory, there would be little reason to disguise conquest as respect for existing agreements. We might even see the subjugation of enemy forces firmly asserted as evidence of legal title—as Britain did in taking the Sudan from Mahdist forces based on the right of conquest—rather than hidden or explained away.[78] Second, were explicitly cooperative or technical practices used in determining boundaries? Or did they instead follow lines of occupation established through a competitive process? Territories could be exchanged, in the latter case, but coincidences of interest would provide a better explanation for which territories were exchanged, and when, than arguments based on legal rights or technical expertise. Third, was the violation of

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[74] Anderson 1966, 210; Langer 1962 152

[75] Otte 2007.

[76] Stimson 1936, 98. Article X of the League of Nations Covenant, Woodrow Wilson's most distinct contribution, was crucial (Raffo 1974). See Brunk and Hakimi 2024 for a different view.

[77] Space and format preclude systematically demonstrating that such a legal-normative context did not also exist in the 18th century, when inter-colonial conquest was common. But the fact that Europeans very rarely agreed on precise inter-imperial boundaries in the Americas before contact with the independent USA is a good indication of this (see Goettlich 2022, appendix, 24-26). For the argument that a modern international order did not recognizably exist until the 19th century, see Bartelson 1995, ch. 6; Buzan and Lawson 2015.

[78] Korman 1996, 109; Langer 1968, 556.

boundaries strongly linked to war? In the absence of a right of territorial inviolability, maintaining ambiguous frontiers without precise definition could be a viable strategy for avoiding conflict, particularly in remote locations where geographical knowledge is limited and detecting boundary violations is difficult. So there might be powerful resistance to officially defining a boundary beyond which war would be inevitable. On all three counts, in both cases, the colonial powers demonstrated faith in the basic rule of territorial inviolability rather than conquest.

Case I: Britain/Russia, Afghanistan (Panjdeh)

1. Conflicting claims and actions confirm agreement on principle of territorial inviolability?

In the late 1800s, Russia's expansion into Central Asia began to approach British India.[79] The point at which the likelihood of a direct war resulting was highest was in 1885, when Russia attacked and defeated an Afghan force at Pul-i-Khishti, near Panjdeh. While Afghanistan was not formally part of the British Empire, Afghanistan's foreign relations were controlled by Britain, and Britain had committed to the defence of Afghanistan against foreign invasion. In 1873 Russia had agreed not to interfere in Afghanistan, but only a very vague definition of Afghan territory was agreed on.[80] Russia, then, claimed that its 1885 action at Panjdeh did not violate Afghan territory. Most likely the incursion at Panjdeh was an unauthorized action initiated by local Russian officers. There are many reports that the Russian military had been ordered not to advance any further in Central Asia. This would also resemble several earlier similar incidents of officers advancing without approval.[81] Russia did not seriously intend to conquer territory from Britain in Central Asia, and it was not territory but prestige that was primarily at stake.[82]

If, as seems likely, the Panjdeh incursion was not state-directed, this would be sufficient evidence that no breach of territorial inviolability took place, and would be consistent with the notion that Russia had every intention of respecting the British protectorate in Afghanistan.

2. Evidence of faith in shared, impartial dispute-resolution practices?

During the year before the Panjdeh incident, a Russo-Afghan boundary commission had already begun.[83] Perhaps the most telling evidence that both sides retained faith in a bilateral solution is that the commission continued despite the two powers' approaching the brink of war. Although British primary accounts of the boundary commission acknowledge the

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[79] Greaves 1959, ch 4; Yapp 1987; Johnson 1999; Fitzhardinge 1968.
[80] Aitchison 1933, 217.
[81] Greaves 1959, 56.
[82] Yapp 1987.
[83] Aitchison 1933, 216

difficulties of compromise, they also stress the cordiality of relations between Russian and British agents on the ground.[84]

The proceedings of the commission reveal an underlying assumption that territory should not change hands, including through any right of conquest, and that prior rights should merely be clarified unless the two powers agreed otherwise. According to the lead commissioner, the correspondence leading to the 1873 agreement showed that the overall intention of both governments was merely to define more clearly the territorial rights already existing, and the same intention was the basis of the agreement of 1885.[85] Russia could have insisted on existing military lines of occupation as a starting point for negotiations, or tried to use Panjdeh as a bargaining chip, based on a right of conquest, or effective occupation, to achieve other aims. Instead, Russia bargained away another portion of territory, which was not previously disputed, in order to keep Panjdeh.[86]

Resolution of the dispute relied significantly on technical geographical and surveying practices. An agreement made that both sides would conduct surveys resolved one of the most difficult deadlocks in the negotiations.[87] While it was mainly Russian initiative that had generated the delimitation, Britain had responded enthusiastically, sending a party of around two to three thousand, including military escort and supply.[88] In May 1885 the Russian boundary commissioner attended a meeting of the Royal Geographical Society in London, where the initial report on the commission was read. For Alexander Morrison, this is a good illustration of "the relatively free exchange of information between Russian and British scholar-administrators, and the shared intellectual assumptions and culture which lay behind it."[89]

3. Violation of boundaries strongly linked to war?

British Prime Minister William Gladstone had considered Russia's promise not to interfere in Afghanistan a "very solemn covenant," interpreting the clash at Panjdeh in starkly moralistic terms: "the Afghans suffered in life, in spirit, and in repute….a blow was struck at the credit and the authority of a Sovereign—our ally—our protected ally—who had committed no offence."[90] Gladstone promised to "have right done in the matter," and brought Britain to the brink of war with Russia.

In British public debates it was not immediately taken for granted that the notion of drawing a clear boundary which could identify a violation of territory—a notion presupposed by territorial inviolability—made sense in a remote, mountainous area such as Central Asia. Some maintained that a mere "paper frontier," marked by pillars in the sand, could never

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[84] Yate 1888, 149; Morrison 2021, 473.
[85] Fitzhardinge 1968, 450.
[86] Yate 1888, 76, 118.
[87] Ghose 1958, 518
[88] Holdich 1901, 99.
[89] Morrison 2021, 472
[90] Greaves 1959, 72.

hold back the Russian advance. But as the Chief Commissioner for the boundary delimitation argued, having a clear boundary was important because it would allow greater state control over war and peace, rather than "the peace of the world" being "at the mercy of any ambitious frontier officer;" now "Russia will not violate the frontier until she is willing and ready to enter into war."[91] Moreover, having a defined frontier would allow both empires to go about their common civilizing mission in harmony. Even the die-hard imperialist Lord Curzon, who was critical of this "artificial" frontier, had to admit in 1889 that the boundary had so far been effective, and that if Russia violated the boundary it would at least clarify to the world that Russia was the aggressor.[92]

For Russia, the events of the 1880s reinforced the principle of confining the legitimate operation of military force to one side of a boundary.[93] The Russian advance through Central Asia had been famously plagued by the problem of local officers acting independently (a problem seen also on the British side). For example, the Foreign Minister was only informed of the decision to annex Kokand in 1876 after it was taken.[94] The Russian War Ministry keenly opposed the boundary delimitation and obstructed it as much as possible because it would limit the independence of the military. The completion of the boundary, then, marked the "end of the long period of military dominance over the empire's Central Asian policies" and the establishment of diplomatic control over boundaries.[95] It signified the end of the continuous expansion that Russian Chancellor Alexander Gorchakov had, in 1864, famously attributed to the lack of a boundary with a "civilized" neighbor.[96]

Case II: Britain/France, Sudan (Fashoda)

1. Conflicting claims and actions confirm importance of territorial inviolability?

The closest Britain and France came to war over colonies was in 1898, when both claimed title to Fashoda, on the Nile in the Bar el-Ghazal region of Sudan. Britain claimed the Bar el-Ghazal based on a right of conquest from the "Mahdist" Sudanese state had briefly controlled it. France, meanwhile, launched an expedition, the Marchand mission, which reached Fashoda before Anglo-Egyptian forces did, and claimed the territory based on effective occupation. In this case, boundaries were particularly unclear even by contemporary standards, with no prior Anglo-French agreements to refer to. In 1895, Sir Edward Grey had stated that any French expedition in the Nile Valley would be "an unfriendly act," but refused to give "a special definition of territory."[97] France had duly made it known that it contested these claims.

But despite the absence of agreements or boundaries that could be violated, each side attempted to prove it had not violated the other's territory in an extensive, public legal debate,

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[91] Ridgeway 1887.
[92] Curzon 1889.
[93] Morrison 2007, 473.
[94] Morris 1975, 526.
[95] Morris 1975, 529.
[96] Morrison 2007, 166, 475.
[97] Langer 1968, 264-7.

and in which both sides used many different parallel lines of legal argument, suggesting a keen interest in avoiding any breach of international law. Britain, for example, argued for possession based on right of conquest arising from the defeat of the Mahdists, but Lord Salisbury also arranged for Egypt to issue a statement that its claims in Sudan had never been abandoned during the war with the Mahdists.[98] France, meanwhile argued both that the Marchand mission constituted effective occupation at the time of the crisis and that the territory had long been French.[99] And even though France rejected Grey's 1895 statement, it tried to show compliance with it anyway, by insisting that the Marchand mission was part of a larger mission which had begun before 1895.[100]

Because, unlike the case of Afghanistan, there were no territorial agreements to refer to, it is not possible to ask whether existing boundaries were respected. But the legal debate surrounding the incident, as well as the nature of the Marchand mission, confirm that both sides placed a high importance on maintaining the legality of their claims, and considered conquering territory from each other to be illegitimate.

2. Evidence of faith in shared, impartial dispute-resolution practices?

The whole premise of the Marchand mission presupposed a faith in international law, as it was a small contingent not intended to be able to resist Anglo-Egyptian forces but only to mark an official presence.[101] Officially, France claimed that the mission gave them effective occupation, and therefore territorial rights, but clearly this was only effective occupation in a legal sense rather than a literally effective occupation. Marchand believed that Britain in response would convene a European conference to settle the more general issue of control over Egypt, during which it would allow the French to stay at Fashoda.[102] A major narrative in the French press, across the very polarized political spectrum, was that France was reasonable and lawful, while Britain depended only on its superior military power. "Strength was on Britain's side, but honour was on France's."[103] Marchand was held up during the divisive Dreyfus Affair as a martyr-hero who could unite France in admiration of his persistence against militarily superior but morally inferior Britain.[104] French writers contrasted Marchand the "pacific conqueror" from Kitchener's slaughter of the Mahdists. So the stakes of the moral and legal argument were high for France.

Because of the popularity of a hard-line stance in Britain, combined with Britain's overwhelming military superiority locally and in general, the government refused to engage in negotiations until the Marchand mission withdrew. But both governments attempted to achieve a compromise solution, and most likely would have found one if it had not been for public opinion in both countries. Privately Salisbury tried to be conciliatory, communicating

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[98] Eubank 1960, 151.
[99] Eubank 1960, 152.
[100] Brown 1969, 89.
[101] Eubank 1960, 161.
[102] Brown 1969, 95.
[103] Thomas and Toye 2019, 70.
[104] Berenson 2007, 131

an unofficial memo noting that French help in clarifying the geographical problem would be needed.[105] He also suggested a boundary that would give some concessions to the French, including some areas in the Nile basin which had previously been subject to Egyptian rule.[106] France, meanwhile, focused its efforts on trying to achieve a negotiated solution, repeatedly signalling conciliation and willingness to make concessions. [107]

Unlike in Afghanistan, cooperative boundary-drawing practices failed to begin until after the crisis was over, which was instead resolved by France simply withdrawing the Marchand mission. And there was sufficient appetite for war both in government and from the wider public.[108] But there are other forms of evidence of interaction during the crisis that show adherence to a civilized international order was important to those involved. Accounts of the events record a politeness and cordiality between British and French agents that appear to perform a shared civilization. Herbert Kitchener, leading Anglo-Egyptian forces, found Marchand and his men to be "the pink of politeness."[109] Marchand did not object to raising an Egyptian flag at the southern end of Fashoda. After discussing their positions, Kitchener suggested they both take a whiskey and soda. Polite interactions meant that Kitchener did not treat Marchand, as Foreign Minister Théophile Delcassé had feared, as a "pirate."[110] Delcassé, similarly, signalled his good intentions when requesting a report from Marchand instead of recalling the mission, by making this request "in the clear," and Salisbury agreed to allow for this delay.[111] When Marchand withdrew, he did so without setting foot on British territory.[112] These polite interactions on the ground kept the peace, made it possible for the boundary to be negotiated in Europe rather than negotiated by war on the ground.

3. Violation of boundaries strongly linked to war?

Britain was certainly ready to go to war over the French violation of supposedly Anglo-Egyptian territory. France had to leave Fashoda before any negotiations could take place, Salisbury insisted. Among British media voices pushing towards war it was a pervasive theme that France was an "intruder." For example the *Evening News* had the following: "If a householder finds a man in his back garden, he does not go to arbitration about the matter… He simply orders the trespasser out, and, if he will not go out of his own accord, he has to go in another fashion."[113]

At the same time, unlike Afghanistan, in the case of Fashoda there was not even a vaguely agreed boundary that could have been violated, only recent, unilateral claims on both sides, so the question does not apply directly. So while France's unwillingness to go to war was

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[105] Eubank 1960, 156.
[106] Brown 1969, 128.
[107] Eubank 1960, 154.
[108] Langer 1968, 561.
[109] Langer 1968, 552.
[110] Brown 1969, 90.
[111] Eubank 1960, 150.
[112] Berenson 2007, 139.
[113] Riker 1929, 66.

clearly the result of being unprepared to face Britain, this is not evidence that France was willing to overlook the norm of territorial inviolability. While many viewed Fashoda as belonging to France by right, the legal case was less than watertight, as evidenced by the fact that not long before the crisis, "The opinion even of the most eminent French jurists, men like Despagnet and Bonfils, was that the Egyptian claims stood, and that the Sudan was neither *res nullius* nor *res derelicta.*"[114] Where there was outrage in the French press it was often directed towards the British lack of compensation for Fashoda.[115] So while the British violation of supposedly French territory was not something France could go to war over, it was grossly unfair and unjust.

Alternative Explanation: "The Long Peace"

It might seem that the absence of inter-imperial conquest is more simply explained by subsuming it within a larger "Long Peace" among European states between 1815 and 1914, during which there were no wars involving all the great powers, and no wars between European states having active colonial rivalries. This peace, then, may have been more a result of intra-European than colonial dynamics.

As acknowledged above, the absence of war between states with colonial rivalries provides an important permissive condition. But it cannot explain the clear divergence between this complete absence of inter-colonial conquest during 1815-1914, on the one hand, and the presence of war and conquest elsewhere in time and space on the other. To begin with, the European nineteenth century was not very peaceful, as can be seen above in Tables 1 and 2. Colonial powers fought against each other in three wars: (France/Spain, 1822-1823; France/Netherlands, 1830-1833; Crimean War, 1853-1856). If there was a "Long Peace," it certainly ended before major colonial rivalries resurfaced; between 1850 and 1875 alone there were four great power wars in Europe.[116] By contrast, there is not one clear example of European inter-colonial conquest. The idea of a "Long Peace" on its own cannot explain that stark divergence.

Perhaps what is important, then, is not so much a coherent, sustained European peace as much as that for some reason, or even by coincidence, European states happened never to have gone to war at the particular times they had active colonial rivalries, despite war elsewhere in Europe. Somehow, Russia and Britain were only at war (1853-1856) before they were within reach of each other in Central Asia, and France and Prussia only went to war (1870-1871) before Germans revived their overseas colonial ambitions. But this simply shifts the question that remains unanswered: what explains the difference between Europeans' success in subordinating colonial rivalries to the European peace, and their failure in subordinating a host of other war motivations, from national liberation and unification to France's attempt to recover its national honor by attacking Prussia in 1870?[117]

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[114] Langer 1968, 557.
[115] Carroll 1931, 173
[116] Correlates of War Interstate War data.
[117] Holsti 1991, 141.

One possible answer might be that Europeans prioritized their homelands over far-away colonial questions. But this is not self-evident because they clearly did not always prioritize issues in this way before 1815. Colonial competition was central, not peripheral, to the eighteenth-century Anglo-French rivalry, and this was reflected in the mercantilist ideas of the time.[118] As Paul Schroeder notes, "The 18th century was filled with wars in North America, the West Indies, India, and on the high seas, which spilled over into Europe, and vice versa."[119] So even if the absence of war between colonial rivals had been mainly a product of European rather than colonial considerations, this would not explain why colonial issues *stopped* being one of the important issues contributing to war after 1815.

Perhaps all this colonial war occurred before 1815 not because colonial issues generally ranked high but because the containment of war depended on a system of great power management of international order which did not yet exist? But the argument of this essay is also based on a system of great power management emerging in 1815. So this would only be clearly an alternative explanation if it can be shown that this system of great power management did not depend on the way European societies defined themselves in terms of a common "civilization," in opposition to "barbaric" societies that needed to be colonized. It would be difficult to sustain such an argument especially in the latter half of the century, at times when the major issues being managed by the great powers related to affairs in Africa and Asia.

One way in which this can be demonstrated is by asking why some powers were included in European inter-colonial cooperation, and some were not, particularly the Ottoman Empire. Such an explanation is difficult to produce without understanding the double standard which divided appropriate relations between Europeans based on law and mutual recognition from relations with non-Europeans based on domination. Acting within this double standard, most European powers by the end of the nineteenth century viewed Ottoman territory as fair game for conquest, despite their 1856 commitment to maintain its territorial integrity.[120] Italy, for example, conquered Tripolitania in 1911. This is because the Ottoman Empire was not a full participant in the European order. Why was it not? "Objective" measures of power cannot explain this, as colonies of small European powers such as Belgium were fully respected. Nor can separateness from the European balance of power, as the expansion of Russian power in the Balkan territories was potentially a direct threat to Austria.[121] Rather, the Ottoman Empire was not a full participant in the European order because it was not identified as a "civilized" power, as explained above.[122]

Conclusion: Further Shifts in the Meaning of Territorial Integrity

This essay has shown that restrictions on conquest have a deep history which goes back at least to the Concert of Europe. This matters in the context of claims that because of Russian conquests in Ukraine, and the possibility that they may become widely recognized through a

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[118] Shovlin 2021; Holsti 1991, 91.
[119] Schroeder 1986, 16.
[120] Childs 1990, 3.
[121] Eg. Anderson 1966, 180.
[122] Zarakol 2011, 115-125.

peace-for-territory deal, an Old World Order of "might makes right" threatens to return.[123] The twentieth-century universal and absolute rule against annexation-by-conquest did not replace a nineteenth-century "law of the jungle." Instead, it replaced a different kind of order, which was reflected in a different set of values and principles. Based on this, it seems unlikely that all restraints on conquest are at risk of disappearing entirely.

One response to this essay might be that the Old World Order simply existed in the eighteenth century, or earlier, not the nineteenth. There is some merit to this: territories in both Europe and the colonies frequently changed hands by force then. But the problem is not just the particular century identified. The concept of "might makes right," while a useful heuristic in some ways, is likely to be an incomplete description of any real political system.

In eighteenth-century Europe, for example, the institution of dynastic monarchy was a moral and legal principle that functioned as a script for international politics. Frederick the Great's 1740 conquest of Silesia, based on a bogus succession claim, might seem to show that monarchy was a thin disguise on a purely anarchical system. But Frederick was merely bending the rules.[124] The French Revolution and Napoleon, by contrast, flipped this board over, upending the accepted rules, and by demonstrating the power of the democratic *levée en masse*, revealed how much of a limiting force the legitimacy of monarchy had always been.[125] And the further back in European history we go, the more relevant the Just War tradition becomes, in which war was illegitimate when simply a means of conquest.[126]

This basic insight, that the absence of rules and institutions never comes in pure form, is not unrecognized. Hathaway and Shapiro, for example, note that Hugo Grotius, who systematized the legal institutions of early modern Europe, accepted the Just War tradition, and believed that outside of "formal" interstate wars it was possible to distinguish just from unjust belligerents.[127] From this perspective, the question scholars should ask is not whether the principle of territorial integrity will give way to "might makes right,"[128] but instead, how might recent events alter understandings of how war and conquest can be limited?

But while such a perspective on the history of law and morality is not unknown in theory, it is rarely applied in discussions of the present and future of conquest. Instead, it is typically assumed that a prohibition of conquest could only be meaningful in its post-1945 form: an absolute prohibition of annexation-by-conquest. Hathaway and Shapiro, for example, are explicit that "there are a limited set of legal systems to choose from": war and conquest are either legal or illegal, and any third possibility can only be a worst-of-both-worlds mixture of

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[123] Hathaway and Shapiro 2017a.
[124] Howard 1991, 53.
[125] Bukovansky 1999.
[126] Brown, Rengger, and Nardin 2002, 214.
[127] Hathaway and Shapiro 2017b, 26; see also Brunk and Hakimi 2024, 425.
[128] For Hathaway and Shapiro (2017b, 24), "might makes right" means legalizing the outcomes of war—something which is not self-evident from the three-word phrase alone.

the two.[129] The Old World Order which we risk "reverting to," they believe, was the "polar opposite" of the New World Order.

What would it mean, then, to acknowledge that a binary vision of an absolute rule of territorial integrity versus "might makes right" may not be adequate to the emerging world order? One possibility, with some proponents among Chinese scholars, is that territorial integrity could become one important principle among others.[130] Such a view remains marginal in international law: while self-determination is often considered a competing principle, it has successfully helped annexation-by-conquest become widely legitimate only in a few cases where colonial enclaves were conquered by newly independent states, and even in these cases the legitimacy achieved was largely extra-legal.[131] What makes Russia's conquests in Ukraine different from anti-colonial conquests, such as India's 1961 conquest of Goa from Portugal, is its greater potential to act as a precedent for future conquests. Although there are still remnants of overseas colonialism, such as Greenland, they were reduced to limited and fairly clearly delimited parts of the world soon after 1961. Self-determination more generally, which is one part of a large and nebulous body of justifications used by Russia in Ukraine, is much easier to see as useful to would-be conquerors in the future.

Yet even if such a view of territorial integrity as relative were to become more mainstream—and a peace-for-territory deal in Ukraine would not automatically lead to that—this would not mean that all limits to legitimate conquest would suddenly be removed. The legitimacy of conquest would continue to be limited not only by the distribution of military capabilities but also by the extent of those other principles. A Russian invasion on the basis of self-determination, under this rubric, would be hard to justify in Mongolia, where there are few Russians. China, likewise, may be able to instrumentalize the relativization of territorial integrity to justify a conquest of Taiwan on the basis of enforcing state sovereignty, but it would be harder for it to make such claims against territory that is part of a widely recognized sovereign state, which Taiwan is not.

This speaks to concerns raised by Brunk and Hakimi that the Russian position has no "limiting principle" which could prevent it from being used as a precedent for the use of force wherever "people continue to harbor historical grievances about the internationally recognized borders that they have inherited."[132] Russia's conquests in Ukraine mark a decisive break in history, for them, because while Western countries may have often violated Article 2(4) of the UN Charter in the past, they always provided such a limiting principle. But Brunk and Hakimi do not seriously engage with Russia's arguments, particularly those of Foreign Minister Sergei Lavrov, which are more specifically intended for an international audience than those of Vladimir Putin.[133] These arguments refer to widely held ideals such as self-determination,

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[129] Hathaway and Shapiro 2017a; see also Brunk and Hakimi 2024, 460, implying that balancing territorial integrity with other principles is a "retreat" from the principle.
[130] See Lin 2023.
[131] O'Mahoney 2018, 197. Indonesia's conquest of East Timor, for example, was not widely recognized (Clark 2000, 81). For Goa, see Korman 1996, 267-275.
[132] Brunk and Hakimi 2022, 689.
[133] Eg. Lavrov 2023a; Lavrov 2023b; Lavrov 2023c. On this distinction, see Kotova and Tzouvala 2022, 717.

which cannot justify just any conquest which is militarily feasible, nor do they imply that all national irredentist conquests are justified. Russia's justifications are deeply flawed—and Brunk and Hakimi do not claim that this is what makes Russia's actions unprecedented—but ignoring its arguments and dismissing their potential to persuade risks underestimating Russia's influence outside the West. No doubt there are reasons to worry about the precedent that a Ukraine peace deal might set, but it is not the case that it would involve no limiting principles at all. It would strain credulity, for example, for the USA to use the Ukraine precedent to justify conquering Greenland.[134]

This relativization of territorial integrity is reflected in the responses of many Global South states to the Russo-Ukrainian War, which show, on the whole, not a desire to critique or dismantle the principle of territorial integrity but rather a struggle to find meaningful positions that will uphold both territorial integrity and some competing principles.[135] Some have emphasized their status as "bystanders" or "collateral damage" of anti-Russian sanctions, suggesting that a right of neutrality should protect them from being forced to take sides.[136] Some states also argue that NATO expansion is to blame for the Russo-Ukrainian War, suggesting that the principle of legitimate self-defense remains important.[137] Regardless of the particular reasoning, the point is that the principle of territorial integrity is not an object of direct critique. Almost all states, including Russia and Iran, continue routinely to voice support for it as long as it is properly contextualized among states' other rights and responsibilities.[138]

Brunk and Hakimi, of course, recognize that states that have "stayed on the sidelines" of the conflict are not in "full retreat" from the prohibition. But still they refrain from characterizing the positions of those states as being guided by any general principles, instead seeing territorial integrity here as a casualty in broader contest largely about the global dominance of the US and NATO. It may be that these states fail to support territorial integrity in the absolute way that it was mostly upheld since 1945, but it would be misleading to suggest that they do not "reflect a concerted effort to uphold it" in any way.[139] Their continuing to struggle to maintain territorial integrity along with competing principles may be the best possible outcome for territorial integrity in this context.

The only major state which is notable in its failure to refer to territorial integrity as a general principle is the USA under Donald Trump. For Trump, "territorial integrity" is first and foremost a US right to be protected against terrorists and immigrants, rather than a prohibition of state conquest.[140] But what is important here is that Trump's rhetorical abandonment of the territorial integrity principle has not yet been matched by a global shift

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[134] It would strain credulity without being impossible, just as the 2003 US justification for invading Iraq did, and suffered consequences accordingly.
[135] Alden 2023; Nadkarni 2024.
[136] Rinke 2022; Mallet and Bounds 2022.
[137] Cocks 2022; Aljazeera 2022.
[138] Islamic Republic of Iran 2022. Lavrov 2023a; Lavrov 2023b; Lavrov 2023c.
[139] Brunk and Hakimi 2024, 461.
[140] See White House communications, eg. White House 2025.

of this kind. Most states continue to see value in territorial integrity as a general principle, even if they are reconsidering its position in their list of priorities.

The central implication of this essay for the fate of territorial integrity today, then, is that it depends on what we mean by territorial integrity. If "territorial integrity" refers to the absolute and universal prohibition of interstate annexation-by-conquest, then there are indeed reasons for suspecting a certain erosion of it. Such a suspicion would be most clearly vindicated if Russia achieves widespread recognition for its conquests in Eastern Ukraine. But supporters of the post-1945 order should not confuse that order with all order in general. If "territorial integrity" refers merely to any kind of prohibition of conquest at all, then this is certainly more durable than it is sometimes feared. If a great power war—whether or not it is initially over territory—were to break out, of course, territorial integrity would be of little help. But it should not be forgotten that conquest has in the past been meaningfully limited without an absolute prohibition. Acknowledging that territorial integrity still has value when relativized among other important goods—including but not limited to peace—may someday be the best way to save it.

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Appendix

For: "Territorial Integrity as an Etiquette of Thieves: Non-Conquest in 19th-Century Imperialism"

Table of Contents

This appendix contains two sections. Section I deals with the central observation that the article explains: that European states did not conquer colonial territory from each other during the nineteenth century (1815-1914). It defines the scope of that claim, and then reviews some data and sources supporting it. Section II gives an additional case study, to be read as a supplement to the two case studies in the main text.

I: Absence of Inter-European Colonial Conquest, 1815-1914

As imperial historian V.G. Kiernan observes, "after 1815 European governments did not fight each other over colonies" until 1914.[141] The main text of the essay builds on this claim. This section of the appendix clarifies what I understand that claim to mean and reviews evidence in its support.

No negative claim of such a large scope can be proven absolutely exhaustively using primary sources. There are simply too many potentially relevant primary sources. The purpose of the discussion here, instead, is to demonstrate that the claim can be asserted with a very high degree of certainty.

Scope

The claim includes the European powers engaged in formal colonialism, and which were part of the Concert of Europe. The question of who counts as a European colonial power is a legitimate one, and there are valid reasons in favor of including the United States and Japan here on the ground that despite not being European states, they did gain entry to the European society of states by the very end of the nineteenth century. Those reasons are not ultimately persuasive, but even if we did include those two states, it would not substantially change the outcome.

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[141] Kiernan 1980, 44.

There are two clear candidates for exceptions to the rule: the Russo-Japanese War and the Spanish-American War. Japan was a member of international society but still peripheral to "Europe" in important, culturally- and racially-inflected ways.[142] According to Koskenniemmi, "The non-European community could never really become European…as Turkey had always known and Japan was about to find out…"[143] European powers did not have ambassadors in Washington until 1892.[144] Because of the Monroe Doctrine (especially on the Olney interpretation), the USA could not have treated Cuba, where the Spanish-American War began, as part of an absolutely foreign sovereignty on equal terms. Moreover, the USA never fully identified itself as a European colonial power. Although it acquired colonies, by around 1900 a prevailing consensus emerged, with the US "Open Door" policy in China as paradigmatic, around economic rather than territorial expansion.[145] An "American exceptionalism," based on the idea that the USA is not like European empires because it does not seek to conquer and rule colonies, has deep roots in US self-understanding, even if it is a misleading idea.[146]

But even if these two wars, at the relative margins of European international society, are considered exceptions, this is still far fewer exceptions than there have been to the territorial integrity principle since 1945. Altman records 44 occurrences of conquest during 1945-2017 where the conqueror held the territory for at least ten uninterrupted years (recording two occurrences where two states both conquered parts of each other's territory).[147] So even if we include two exceptions for the colonial domain in the years 1815-1914, there is still a remarkable contrast with the 44 exceptions to the rule globally in the years 1945-2017.

Sources

A range of general accounts of nineteenth-century colonialism do not mention any conquest or uses of force among European powers across boundaries in the colonized world.[148] Although Kennedy refers to the Fashoda incident as a "clash," it involved no clear violation of a recognized colonial boundary, as we saw in the main article.[149] In itself this does not rule

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[142] Suzuki 2005

[143] Koskenniemmi (2004: 135)

[144] Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987), 194

[145] Williams, William A. 1972. *The Tragedy of American Diplomacy*. New York: Dell.

[146] Julian Go, *Patterns of Empire: The British and American Empires, 1688 to the Present* (Cambridge: Cambridge University Press), introduction.

[147] Altman, Dan. 2020. "The Evolution of Territorial Conquest After 1945 and the Limits of the Territorial Integrity Norm." *International Organization* 74 (3): 490-522.

[148] If there were major instances of these things occurring, they would be likely to appear in at least one of these (but they do not): C.A. Bayly, *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons* (Malden, MA: Blackwell, 2004), chs 4 and 6; Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2010), ch 10; Jürgen Osterhammel *The Transformation of the World: A Global History of the Nineteenth Century* (Princeton: Princeton University Press), ch 8; Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987), chs 4-5.

[149] Kennedy, *Rise and Fall*, 219.

out the possibility of conquest without war, or without major war. But it is an indication of the relatively high degree of order among the colonial empires, and makes it essentially certain that no conquest occurred over any territory considered a vital interest to one of the European powers. If we continue to search beyond this for examples of inter-European colonial conquest, it is primarily any conquest that might have occurred over territories that were relatively small-scale and, for the colonial power, low-priority that we are concerned with.

There are three datasets that can be used to assess the claim, none of which reveal any exceptions to it. Before examining them, it is important to emphasize that none of these datasets prove the claim absolutely conclusively, primarily because none of them were constructed with the purpose of determining whether the colonial powers fought over colonies. They were instead constructed originally with primarily European history in mind. As one of the anonymous peer reviewers of the article pointed out, events involving an exception to the claim may not have been prioritized by those constructing large datasets. Moreover, the large-N approach is less conducive towards identifying any exceptions to the claim there might be which are not clear-cut exceptions. However, consulting them does add certainty to the claim, beyond what we might achieve merely by consulting a large number of general secondary sources. Assuming that the datasets were constructed through *bona fide* efforts to apply the criteria set by researchers, it is significant that they display no clear exceptions.

First there is Holsti's data in *Peace and War* (1991). Holsti enumerated major wars and interventions from 1648, including not just wars involving 1000 or more casualties but also "some major interventions" involving an occupation of foreign territory.[150]

	1648-1713	1715-1814	1815-1914	1918-1941
Number of colonial competition wars	2	4	1	-
% of all wars	9	11	3	-

This shows a clear drop in the proportion of wars including colonial competition in the period 1815-1914. The only war of colonial competition Holsti includes in that period is the Russo-Japanese War, which, as discussed above, is marginal to inter-European colonial rivalry because Japanese was not a fully "European" power. Holsti notes that "the nineteenth century did not witness a continuation of the great Anglo-Spanish-French armed [colonial] rivalries of the previous century. The post-Napoleon settlements were authoritative in this issue area for more than fifty years."[151] In 2021 Atkinson updated Holsti's data to include non-European wars in the 19th century and some smaller wars in the 20th century, but added no 19th century wars fought between European empires.[152]

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[150] Holsti, Kalevi. 1991. *Peace and War: Armed Conflicts and International Order 1648-1989* (Cambridge: Cambridge University Press), 20.

[151] Holsti, *Peace and War*, 153.

[152] Douglas Atkinson, "The Issues Are the Issue: Intangible Salience and War Duration," *International Interactions* 47: 6 (2021), 1016–39.

Secondly there is the Territorial Changes data originally by Tir, Schafer, Diehl, and Goertz, and now updated in its sixth version released in 2019.[153] This dataset records each territorial change between 1815 and 2018, in which one participant was a recognized nation-state. It also records how each territorial change was accomplished and whether or not the territorial change was accompanied by conflict. For each entry between 1815 and 1914, where both the gainer and loser were a European country, and the entity was a colonial dependency, the procedure was "cession" (rather than "conquest" or "annexation") and none was accompanied by conflict.

The Territorial Changes data relies on the Correlates of War project for its definition of what constitutes a recognized nation-state. As Tanisha Fazal has pointed out, that set of recognized nation-states is problematic in general because it excludes many non-European states.[154] For our purposes here, however, this is not a problem because it is only the absence of conquest by Europeans against Europeans—a kind of cooperation that made nineteenth century colonialism possible—that we are concerned with.

Finally there is the CShapes 2.0 data, which maps the borders of states and dependent territories since 1886.[155] Each entry corresponds to a country-period, in which the boundaries and attributes of an entity remained the same. Each time the borders or attributes of an entity changed, it receives a new entry. While the CShapes 2.0 proper does exclude much of the period in question (1815-1914), it does cover almost one third of that period, including the part in which colonial territorial disputes were most likely, closely following the entry of Germany and Italy into full-scale colonialism and the Berlin West Africa Conference. And part of the data that it relies on, the Correlates of War list of dependencies, goes back to 1815, so we can look for some kinds of potential conquest throughout the period in question (see below, no. 3).

CShapes 2.0 includes no information on how border changes occurred—and whether conquest or annexation were involved—but it can be used to search for changes in boundaries between empires, where conquest or annexation might have occurred. Occurrences of conquest can be divided into three groups as follows:

1. Border changes where the victim entity remains but diminished in size. If this is the case, there should appear two or more entries with the same start date. Once we have a list of these co-occurrences, we can then determine whether they are products of conquest. For our purposes, we are only looking at the period 1886-1914, the two or more entities should be dependencies of two different European empires, and they should also be neighbors. The data include 12 groups of entities within these constraints:

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[153] Jaroslav Tir, Philip Schafer, Paul Diehl, and Gary Goertz, "Territorial Changes, 1816-1996: Procedures and Data", *Conflict Management and Peace Science* 16 (1998), 89-97.

[154] Tanisha Fazal. *State Death: The Politics and Geography of Conquest, Occupation, and Annexation*. (Princeton: Princeton University Press, 2007), 243.

[155] Guy Schvitz, Seraina Rüegger, Luc Girardin, Lars-Erik Cederman, Nils Weidmann, and Kristian Skrede Gleditsch. "Mapping The International System, 1886-2017: The CShapes 2.0 Dataset," *Journal of Conflict Resolution* 66:1 (2022), 144–61.

Entity	Start Date	End Date
Ghana	1888-12-01	1898-06-13
German Togoland	1888-12-01	1896-12-31
Sabah (North Borneo)	1889-06-20	14/07/1946
Sarawak	1889-06-20	30/06/1946
Indonesia	1889-06-20	16/08/1945
Congo, Democratic Republic of (Zaire)	1891-06-11	1894-08-13
Angola	1891-06-11	29/05/1905
Mozambique	1891-06-11	24/06/1975
Zimbabwe (Rhodesia)	1891-06-11	28/01/1900
Benin	1897-07-23	1898-06-13
German Togoland	1897-07-23	30/08/1914
French West Africa	1898-06-14	24/12/1902
Benin	1898-06-14	31/07/1960
Ghana	1898-06-14	05/03/1956
Djibouti	24/01/1900	26/06/1977
Eritrea	24/01/1900	18/05/1941
Mauritania	08/04/1904	02/10/1904
Northern Nigeria	08/04/1904	31/12/1913
Angola	30/05/1905	10/11/1975
Northwestern Rhodesia	30/05/1905	17/08/1911
Congo, Democratic Republic of (Zaire)	16/06/1910	29/06/1960
Uganda	16/06/1910	20/04/1914
Sudan	16/06/1910	20/04/1914
Kamerun	30/03/1912	03/03/1916
Gabon	30/03/1912	27/06/1919
Central African Republic	30/03/1912	27/06/1919
Chad	30/03/1912	27/06/1919
Congo	30/03/1912	27/06/1919
Mauritania	27/11/1912	22/04/1913
Morocco	27/11/1912	01/03/1956
Spanish Morocco	27/11/1912	06/04/1956
Spanish West Africa	27/11/1912	09/10/1958

Histories of these boundaries can be found in the two encyclopedias that were used to create the CShapes 2.0 data.[156] In none of these cases does any account in those encyclopedias of any of these boundaries show evidence that any European empire conquered or annexed any territory in violation of an agreed boundary. In some cases new and unestablished claims faced protest and potentially reversal, but once the European empires agreed on borders these were not violated before 1914. For example, in 1886 when Portugal concluded treaties with France and Germany which would

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[156] Gideon Biger (ed), *The Encyclopedia of International Boundaries* (Jerusalem: Jerusalem Publishing House, 1995); I. Brownlie and I. R. Burns, *African Boundaries: A Legal and Diplomatic Encyclopaedia*. (London: C. Hurst & Co. Publishers, 1979).

place the area between Angola and Portuguese East Africa under Portuguese control, Britain protested, and claimed these areas for itself.[157] But this was resolved peacefully by agreements in 1891 and 1893 which laid the basis for today's boundaries in the region. By contrast, where boundaries not between two European empires were determined through war, and where territories were conquered, this is made clear in the text.[158]

2. Conquests of entire entities, such that the victim no longer exists. This can be ruled out quickly by sorting entries by name, such that entries referring to the same entity appear together. For every entry with a start date before 1914, which is also a dependency of a European empire, there is either an end date after 1914, or there is a later entry with the same name that has an end date after 1914. This shows that there were no entities in this dataset that both began and ceased to exist by 1914. The one exception to this is French West Africa, which appears in the data to have an end date of 1904, but this is because it is replaced by the entity "Mali" from 1905.

3. Transfers, through conquest, of entities from one empire to another. For this category of border change, CShapes 2.0 relies on the Correlates of War list of dependencies.[159] This list shows each entity since 1815 which has been a dependency of another entity, with a separate entry for each new dependent status. So for this category of potential conquest, we can go back to 1815, the start date of the period we are concerned with, rather than remaining within the constraints of the CShapes 2.0 data, which start in 1886.

   Each entry with a start date after 1914 can first be removed. We can also remove seven transfers involving the ending of wartime occupation of colonies during the Napoleonic Wars, even though they occurred within the two years following 1815.[160] Each of these territories was transferred to a power other than the occupying power as part of the settlement of the Napoleonic Wars, which the occupation was a part of, and which by custom is not counted as part of the nineteenth century. We can also disregard four entries which are leases rather than conquests.

   There are thirteen examples of transfer from one European[161] empire to another, which can be put into eight groups:[162]

Entity	Date	Status Before	Status After
1. Coromandel Coast Posts[163]	1825	Dutch	British
Malacca	1825	Dutch	British

[157] Brownlie and Burns, *African Boundaries*, 1219.

[158] Eg. the Argentina-Uruguay boundary (Biger, *International Boundaries*, 43), or the Russian conquest of "Uzbekistan" (Ibid., 18).

[159] Schvitz et al, "Mapping the International System," 148.

[160] Senegal, French Guyana, French India, Indonesia (Dutch East Indies), St Pierre and Miquelon, Curacao, and Sint Eustatius.

[161] Defined as above.

[162] I am also omitting Longwood, which was transferred property rather than sovereignty, and Bissau, where Britain maintained a historic claim against the Portuguese from the eighteenth century without acting on it.

[163] H. R. C. Wright, "The Anglo-Dutch Dispute in the East, 1814-1824," *The Economic History Review*, 3:2 (1950), 229- 239; Graham Irwin, *Nineteenth-Century Borneo: A Study in Diplomatic Rivalry*, ch. 3, "The Treaty of 1824."

	1825	British	Dutch
Bencoolen	1825	British	Dutch
2. Tranquebar and Serampore[164]	1845	Danish	British
3. Danish Posts (Gold Coast)[165]	1850	Danish	British
4. Dutch Posts (Gold Coast)[166]	1871	Dutch	British
5. St Barthelemy[167]	1878	Swedish	French
6. German Solomon Is.[168]	1899	German	British
7. Caroline Is.[169]	1899	Spanish	German
Mariana Is.	1899	Spanish	German
8. Spanish Morocco[170]	1912	French	Spanish
Southern Zone of Spanish Morocco	1912	French	Spanish

As can be seen in the sources cited in the table, all these acquisitions were achieved by agreements, purchases, and exchanges, and not by conquest. Britain and the Netherlands exchanged colonies in the East Indies for mutually beneficial reasons. Danish and Swedish colonies, and a Dutch colony in Africa were negotiated away because they were no longer successful. Germany gave up some of its portion of the Solomon Islands as part of a deal to receive Samoa outright, which had previously been a British-American-German condominium. When Spain lost all its largest Pacific and Caribbean colonies to the USA in the Spanish-American War, it sold some smaller remaining colonies to Germany. Finally, the allocation of a part of Morocco to a Spanish Protectorate was not really a transfer from France at all because France had already secretly recognized the Spanish right to a protectorate there in 1904, well before both Moroccan protectorates were declared officially in 1912, and before the Correlates of War list of dependencies shows Morocco as a French protectorate starting in 1911.

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[164] Bose, A. (2022). History of Serampore as a Danish Trading Post, 1755–1845. *South Asia Research*, *42*(3), 381-397.

[165] Georg Norregard, *Danish Settlements in West Africa, 1658-1850*, trans. Sigurd Mammen (Boston: Boston University Press, 1966), ch 22, "The Sale;" Holger Weiss, "The Danish Gold Coast as Multinational and Entangled Space, c. 1700–1850", in Magdalena Naum and Jonas Nordin (eds), *Scandinavian Colonialism and the Rise of Modernity* (New York: Springer, 2013).

[166] Larry Yarak, *Asante and the Dutch 1744–1873* (Oxford: Clarendon Press, 1990), ch 2, "Asante, the Dutch, and Elmina: An Overview, 1701–1872."; A. B. Ellis, *A History of the Gold Coast of West Africa* (London: Chapman and Hill, 1893), ch 21.

[167] John L. Hennessey (2024) "Cutting colonial losses: imperial ideology in media coverage of the 1878 transfer of Saint Barthélemy in Sweden and France", *Scandinavian Journal of History*, 49:1, 46-68; Rolf Sjöström (2001) "Conquer and Educate. Swedish colonialism in the Caribbean island of Saint-Barthélemy 1784-1878", *Paedagogica Historica*, 37:1, 69-85.

[168] Joseph Waldo Ellison, "The Partition of Samoa: A Study in Imperialism and Diplomacy" *Pacific Historical Review* , 8:3 (1939), 259-288; Judith Bennett, *Wealth of the Solomons: A History of a Pacific Archipelago, 1800-1978* (Honolulu: University of Hawai'I Press, 1987), 436n30.

[169] Pearle E. Quinn, "The Diplomatic Struggle for the Carolines, 1898" *Pacific Historical Review* 14:3 (1945), 290-302; Francis X. Hezel, S.J., *Strangers in their Own Land: A Century of Colonial Rule in the Caroline and Marshall Islands* (Honolulu: University of Hawai'i Press, 1995), 92-95.

[170] Susan Miller, *A History of Modern Morocco* (Cambridge: Cambridge University Press, 2013), 88; "Treaty Between France and Spain Concerning Morocco," *The American Journal of International Law* 6:2, Supplement: Official Documents (1912), 116-120.

II: Additional Case Study

Case III: Britain/France, Upper Niger

   1. Conflicting claims and actions confirm importance of territorial inviolability?

Outside Asia, Britain's main colonial rival was France. The two powers came closest to war in the late 1890s, with two of the main disputes occurring in Africa, in the Upper Niger and Upper Nile regions. [171] In the Upper Niger, they had made a firm agreement on spheres of influence in 1890, but there were significant ambiguities in this agreement.[172] That agreement declared:

> The Government of Her Britannic Majesty recognizes the sphere of influence of France to the south of her Mediterranean Possessions, up to a line from Saye on the Niger, to Barruwa on Lake Tchad, drawn in such a manner as to comprise in the sphere of action of the Niger Company all that fairly belongs to the Kingdom of Sokoto…[173]

By recognizing the French sphere up to a line from Saye to Barruwa, the agreement seems to suggest that there is no French sphere beyond that line, but this was problematically implicit.

The colonial undersecretary, Eugène Étienne, had not been consulted and was badly stung by this agreement.[174] As a result he gave approval for an expedition to sign protection treaties with local rulers along the Saye-Barruwa line. His intention was to support more extensive claims, but he misled the Council of Ministers about the nature and purpose of the mission and did not inform the Foreign Ministry. The illicit means by which this action, arguably in violation of the agreement with Britain, was conducted is an indication that risking a breach of a territorial agreement would have met with official disapproval.

One of the findings of this mission was that Britain had exaggerated its presence near the Saye-Barruwa line.[175] Many in France then called the legitimacy of the 1890 agreement into question and some called for rejecting it, as it had apparently been premised on British deception. But instead of rejecting the agreement, France adhered to a literal interpretation of it.[176] The French interpretation was that the agreement left open the question of whether Britain recognized a French sphere south of the Say-Barruwa line, outside the territory of Sokoto.[177] The French clearly considered it important to maintain a credible and consistent interpretation of the 1890 agreement. One way in which they attempted to do this was by

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[171] For general accounts of the Niger dispute, see Hirshfield 1979; Cook 1943.

[172] Kanya-Forstner 1969.

[173] Hertslet 1909, 739.

[174] Kanya-Forstner 1969, 650.

[175] Hirshfield 1979, 40; Hiribarren, 56

[176] Hirshfield 1979, 28.

[177] Hirshfield 1979, 85; Hiribarren, 57

showing that they had not encroached on the territory of Sokoto, for example by visiting French-claimed places such as Argungu and insisting they had evidence that it was not part of Sokoto.[178] They also framed these treaties as purely commercial agreements to avoid political interpretations.[179]

The British response to French encroachments also relied on the principle of territorial inviolability. In response to a French mission the British considered an encroachment, ambassador Lord Dufferin sent a formal protest insisting that "in total disregard of" the 1890 agreement, a French agent had placed the Sultanates of Adamawa and Muri under French protectorate.[180] He "disregarded all the duties imposed on a foreigner passing through the territory of a friendly Power," a clear reference to the principle of territorial inviolability, and these allegations "are abundantly supported by documentary evidence."[181]

Even if it could be shown that France violated the intention of the 1890 agreement, the fact that France adhered to a literal interpretation of it shows that the agreement still shaped French actions. Both French actions and the British response support the notion of territorial inviolability.

2. Evidence of faith in shared, impartial dispute-resolution practices?

The 1898 agreement which settled the disputes in northern Nigeria was only the last and most comprehensive in a series of such Anglo-French boundary agreements in West Africa going back to the 1860s.[182] After a series of failures, these agreements became more systematic and general in the 1880s.[183]

Following the terms of the 1890 agreement, a Niger Commission met in 1892 and 1896, ending in failure, one of the main causes being the basic lack of a common interpretation of the meaning of the Say-Barruwa line.[184] The meetings of the commission were often unproductive, degenerating into a series of incompatible claims and counter-claims. Nor were the rules of the game always clear, with the French generally preferring effective occupation and the British generally favouring prior treaties and hinterland rights extending from their coastal possessions.[185] But one of the important principles that both sides took into account, as Britain and Russia did in the Afghan Boundary Commission, was to base their claims on the existing boundaries of polities they established as within their respective imperial spheres.[186] For example, in the case of Bornu, Britain and France agreed it should be kept intact but disagreed on which dynasty to recognize there.[187] In 1897 the commission met again, this time

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[178] Hirshfield 1979, 97.
[179] Hirshfield 1979, 56.
[180] Ministère des Affairs Etrangères 1945, 602.
[181] Ministère des Affairs Etrangères 1945, 603
[182] Robinson, Gallagher, and Denny 1961, 164.
[183] Hertslet 1909, 730.
[184] Hirshfield 1979, 42, 83.
[185] Hirshfield 1979, 120.
[186] Hiribarren, 58
[187] Hiribarren, 68.

successfully concluding an agreement which is now the boundary between Nigeria and Burkina Faso. The eventual success of the Niger Commission demonstrates faith in and effectiveness of joint dispute-resolution mechanisms and the containment of colonial territorial rivalries.

British doubts about the legitimacy of their claims, internally discussed, show that legitimate title, and not just effective military control, mattered. Salisbury told Chamberlain, "I cannot discover on what our claim to [Ho] rests. But I should prefer giving up Bona to giving up Ilo because our title to Bona seems to me positively bad."[188] Such doubts strengthened an existing movement in favor of conciliation with the French, against the more hawkish Chamberlain.[189] Salisbury referred the key ambiguities to the Law Officers of the Crown, asking for their authoritative legal interpretation of the 1890 agreement.[190]

3. Violation of boundaries strongly linked to war?

As the confrontation intensified, Britain embarked on a "chessboard" tactic, meaning that British military detachments would take up dispersed positions behind the furthest advances of the French, while under orders not to initiate actual hostilities. There is clear evidence that British officials, even those otherwise considered prominent champions of British colonialism such as George Goldie and Frederick Lugard, were ambivalent about this tactic and viewed it as risky, whatever its merits.[191] Lugard remarked, "As regards violating French posts and effecting joint occupation, I told Willcocks not to do it. It would probably mean a collision at once.... Far better to stick to the rules of the game, such as it is."[192] This notion of "the rules of the game, such as it is" refers to the norm against violating boundaries. Moreover, the quotation also makes explicit the consequences of violating those rules: a "collision," or war. And the sentiment behind this quotation was held widely among British officials involved. A similar idea of the rules was held on the French side: the officer of the French garrison at Kanikoko sent a protest note to the British, accusing them of "breaking all rules of civilised countries by invading French territory in time of peace."[193] But while this quote demonstrates a wider sense of the rules of the game, the accusation of violation was not pressed, and the notion of what Wesseling calls a "flag-planting race" effectively contained the way in which Britain and France construed each other's actions: as long as "wherever a tricolor flew, a Union Jack was quickly hoisted not too far away," it was possible to consider the rules stretched but not broken.[194]

On the other hand, it was when French agents were most clearly in violation of the 1890 agreement, by any literal interpretation, having been found operating in the heart of Sokoto, that the British felt most prepared to take up an armed position. Salisbury wrote to Goldie

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[188] Cook 1943, 143.
[189] Hirshfield 1979, 126.
[190] Hirshfield 1979, 127.
[191] Ukpabi 1971, 455.
[192] Hirshfield 1979, 173.
[193] Ukpabi 1971, 457.
[194] Wesseling, 212

that the Niger Company was "justified in taking any steps which may be necessary to prevent the recurrence of such a violation of territory which has been assigned to Great Britain by a formal international document."[195]

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[195] Hirshfield 1979, 144.