BOOK REVIEWS

Emilia Justyna Powell and Krista Elena Wiegand, *The Peaceful Resolution of Territorial and Maritime Disputes* (Oxford University Press, 2023)

I. INTRODUCTION

There is a version of the ancient Spanish sport of bullfighting known as "fighting lemon-style", based on the principle that two matadors come together like the halves of a lemon that has been cut in two and then reunited. The rule is that both fighters must deliver lethal blows to the bull simultaneously while wrapped in the same cloak and one condition of this dangerous sport stipulates that the participants must be blood brothers, although this contest may take place only once in 50 years (Pablo Neruda, *España en el corazón* [Spain in the Heart] (1937; Neruda's autobiographical poem), ch. 3;).

In the present case we have two women engaged in writing the same book from an identical angle, so that there is no difference between them – though as far as the "bull" is concerned (to continue with this analogy), the only aspect that concerns us here is the subject of their thesis; in other words, conflict between states over territories and maritime areas.

The main focus of their book is an issue that is of crucial importance for world peace: the peaceful resolution of differences between states over the ownership of areas of land and sea. In examining the complexities of international disputes, it considers the options for reaching a settlement and the ways in which states approach their chosen methods. These may include negotiations and non-binding processes such as mediation, reconciliation, investigation and good offices, as well as the implementation of agreed solutions, including through arbitration and legal procedures. The basic thesis of the book is that it is in the nature of states to seek ways of resolving disputes peacefully within the framework of their strategic options – that is to say, in such a way as to minimize their losses and maximize their profits.

We can see one example of this singular approach to a project in the case of the French philosopher Gilles Deleuze and the psychoanalyst Felix Guattari, who describe themselves as "two streams flowing into one and the same river", and indeed our two authors also share this same unique attribute. In their introductory "Thanks and Acknowledgements", they also compare their work to two streams flowing into one river – in this case the "river" of research into the peaceful resolution of territorial and maritime disputes. Powell is primarily concerned with the legal processes for settling disputes, while Wiegand focuses more specifically on territorial and maritime conflicts, and it was their common interest in disputes and the inseparable relationship between the different aspects of the issue that brought the two of them together. After all, research into conflicts does not necessarily

mean that the researchers have to have conflicting points of view. On the contrary, different parties can share identical positions and co-operate and that is what has happened in the case of this book.

Krista Wiegand's academic relationship with Emilia Powell may be said to have begun at a symposium in 2004 at Georgia Southern University when, as she was writing notes from a talk by her future co-author, it suddenly struck her that "Emilia and I could co-operate on a research project". As so it was. The first thing they did was produce five joint articles and the chapter of a book on the peaceful resolution of territorial and maritime disputes. A series of constructive meetings within the precincts of Georgia Southern University developed over the next few years into a successful working relationship and their subsequent research came to form the backbone of their book.

II. THE BASIC ELEMENTS OF THE BOOK

When considering the basic elements of the book it would be useful to draw a distinction between the philosophical and the methodological:

With regard to the former, we find two elements:

1 - Historically, as far as mankind is concerned, philosophy has two views of humanity. One maintains that human social groups owe their origin to man's natural inclination towards conflict and mutual hostility (Machiavelli, Hobbes, Hegel). In political and anthropological philosophy, this is known as the "agonistic tendency". In contrast, there is a view that sees man and human society as being essentially harmonious, pacific and conciliatory in nature (Rousseau and those of his ilk). In our times, thanks to modern philosophical discourse, these two views have reemerged in new and different forms: the "political" dialectic of Leo Strauss and Karl Schmitt, and Chantal Mouffe's dialectic against Habermas on political concord or division. My impression is that – on the basis of their observations on what is happening in the world around them – the authors of this book are inclined towards the agonistic position. They both note that conflicts over control of land and sea areas, and claims to sovereignty over them (whether or not the party concerned actually possesses them), are normal features of international relations.

2 - Both authors have opted to portray conflicts as a consequence of the "expediency tendency". That is to say, they maintain that the actions of states are guided by the principle of "profit and loss" – a practice they describe as "strategic accounting". In other words, every state, whatever its nature or status, "sets out its accounts" in a way that will ensure it derives maximum profit when resolving disputes. This involves manoeuvring and the adoption of calculated strategies and tactics. Moreover, if the slogan of some phenomenologist philosophers is "back to the things themselves", in contrast to the slogan "back to the texts" preferred by

certain "interpretative thinkers", our authors' slogan (if they had one) would be closer to the former than to the latter. ("Back to the practices" would probably sum up their approach.)

So much for the book's anthropological, political, social and legal "philosophical elements". Its methodological aspects include an "inductive tendency" in which the authors invariably focus on "conditions", "factual evidence" and "events"; they constantly support their assertions by citing evidence from the past, particularly when they are discussing present-day incidents and events. Of the book's approximately three hundred pages, nearly every page offers evidence that cites a condition or event as an example.

Thus, the philosophical and methodological elements of this book show a "pragmatic tendency" and an "inductive tendency" as well as an "agonistic tendency". Sometimes the authors acknowledge this explicitly, while at other times they imply it – which reminds us of the time the French philosopher Michel Foucault was asked: "Why isn't Karl Marx mentioned as one of the sources and references for your book?" His reply was: "When I use the authors I like, I do not need to mention their names"; in other words, they are like a "toolbox" that a person uses without having to name his tools. This is what the authors have done with their book; they have sometimes assumed the three "tendencies" without specifying them explicitly.

III. INTRODUCTORY SUMMARY: THE MAIN POINTS COVERED BY THE BOOK

This book begins by listing the nine points subsequently covered in the body of the text. They are:

1 - There is no state without a territory over which it exercises its sovereignty. It is one of the principles of political science that one attribute of a state is that it should have a territory over which it extends its authority. Thus it is self-contradictory – or *contradictio in adjecto* – to talk about sovereignty without a territory.

2 - Conflicts over territory are older than conflicts over maritime areas. This is because it is land borders that determine sea borders. The former are the "roots" and the latter are their "branches".

3 – It follows from the previous point that the Law of the Sea states that jurisdiction over land determines jurisdiction over sea areas.

4 - Practical experience shows that the nature of states' actions is broadly determined by domestic and international political considerations - as well as by the nature, attributes and value of the disputed territory and the relationship between the states involved in the dispute.

5 - Disputes between states are never static. They are always dynamic and multi-faceted and in a constant state of flux.

6 - Any state seeking a solution to a dispute should opt for a procedure described by the authors as "the strategic path". It is up to the states concerned to choose the most expedient strategies for settling their disputes that – that is, the strategies that will best serve their interests.

7 - During the course of their disputes, states need to opt for the most effective and feasible ways of reconciling means with ends. This is why so many different ways of resolving disputes are available.

8 - In settling a dispute, the option a state chooses may expose it to the risk of losing its case. This is why states aim to establish "convenient" processes for resolving them. When formulating its demands a state will endeavour to minimize the uncertainty that the settlement process entails.

9 - There is a dialectical interaction between the two legal systems (domestic and international) to which states turn for settling disputes. The general rule here is that the states concerned will look at international law from the perspective of their own domestic law while seeking to ensure a ruling that will lead to an outcome that serves their interests. The route they gamble on will always be fraught with risk and uncertainty, which means that states need to go for the strongest option that best supports their case while rejecting weaker options.

IV. THE BOOK'S LINE OF APPROACH AND THEORETICAL PARAMETERS

A. Its Approach

The authors approach their study from two angles: "comprehensive", covering the whole gamut of peaceful settlement through all its stages, and "empirical", in that their examples are taken from a wide range of relevant events and incidents. In doing so, they pose the following question about the literature that already exists on this topic: What is the main distinguishing feature of studies on territorial and maritime disputes? Their answer is: They are few in number and they tend to approach the subject from a narrow, fragmented and highly specialized perspective.

This, they say, is because:

First, the number of studies on the subject can almost be counted on the fingers of one hand.

Second, most existing studies take a "fragmentary" approach to disputes; that is to say, they limit themselves to specific factors or legal considerations that influence the routes states choose for settling their disputes: for example, the nature of the political system, the types of alliances, the importance and value of the disputed territory or sea area, the history of the dispute and the status of the parties' membership of international bodies.

Third, most studies in this field are highly specialized, but in a negative sense. (The word "specialization" is normally used in a positive sense, or at least not pejoratively.) However, one of the shortcomings of narrow specialization is that, if it is excessive, it will –paradoxically – defeat its own purpose. An exclusive concern with a single area is like eating only one type of food, which is one of the causes of malnutrition. Thus if contributions in this field are written solely by specialists in law or politicians and decision-makers, their focus will be on practical issues and they may well tend to ignore or reject the theoretical aspect. However, Powell and Wiegand have no desire to "dig the grave" of theory. On the contrary, they aim to pose two fundamental theoretical questions – Why? and How? In other words, they examine the rationales that cause states to prefer certain courses of action for resolving disputes and devising strategies and, unlike authors with narrow specializations (the law and politics), they do not see the rationales as falling outside the realms of investigation and areas of competence. They have chosen this line of approach because issues and conflicts are complex and the factors behind them tend to overlap and become intertwined. Accordingly, "the peaceful resolution of a territorial or maritime dispute involves a dynamic, interconnected and multi-layered interaction between numerous influences, some of which are political and some legal." A "fragmentary" approach creates a hiatus in the usual, standard type of academic literature on international law – and this is particularly true of certain university studies on the resolution of disputes and the behaviour of the states involved.

The dynamics of modern conflicts and disputes raise numerous questions about the ways in which the law (domestic and international) interacts with politics and strategy. The methodological principle we need to recognize here is: The more we understand and recognize the fusion between these influences, the better we shall understand the reality and dynamics of conflict. That is why the authors have tried to avoid the kind of "malnutrition" caused by excessive specialization and have opted instead to weave the legal, political and strategic factors into a single line of approach. While they do not deny that they have had recourse to a range of other published sources, they have also added a significant element of their own – a comprehensive, holistic examination of ways of resolving disputes peacefully.

B. Theoretical Perspective

The book adopts a "rational choice perspective" and sees the way states behave as "strategic" and based on an analysis of the costs and benefits involved. Thus, rather than being a book purely about theory or purely about practice, it steers a middle course between the two and makes an empirical study of international law in order to understand how it operates in specific situations and in relation to specific states.

C. Methodology

Rather than applying a "one-sided methodology", the authors' approach is what we might call "multi-faceted". This reflects the fact that we explained earlier – i.e. that the book was written not by one person but by two. They are not only concerned with interpreting statistics and numbers; they have also acquired their data about the facts on the ground through interviews and face-to-face encounters, because, in their view, statistics are only effective for interpreting and rationalizing the visible symptoms. In other respects, mere statistics are deaf and dumb and need someone to make them talk. And, in the authors' view, the people who can make them talk are government legal advisers, judges, adjudicators, students of international law, senior officials and other experts. Thus the hermeneutics that need to be applied here are similar to the sacred hermeneutic principle when interpreting the Qur'an or the Bible. The Qur'an and the Bible are texts contained within the covers of a book and they do not speak with a tongue; therefore an interpreter is needed and it is human beings who give them a voice.

Of course there is a difference. With the Holy Scripture it is a case of reading a text, while here – in settling disputes – it is a question of "reading" behaviour.

V. THE BOOK'S STRUCTURE

The book comprises eight chapters including an Introduction (listed as "Chapter 1") and a Conclusion (Chapter 8), as well as a bibliography and an index of names. Chapter 1 describes the circumstances in which the book was written, as well as its general format and vision and the factors that distinguish it from other books on the subject. Chapter 2 forms the foundation upon which the rest of the book is based and explains that, when states are in dispute over territory, they choose one of three courses of action (or inaction): either they do nothing, or they resort to force, or they seek a peaceful solution.

With regard to the third course of action, which is the option examined in this book, the authors discuss the principles underlying the various routes to a peaceful resolution. These include bilateral negotiations, the involvement of a third party whose opinion is non-binding (fact-finding, good offices, mediation, conciliation) or binding measures (arbitration, litigation). The authors offer numerous examples of the various means to which states resort in order to settle their disputes peacefully. As this chapter is primarily concerned with definitions and reviews of actual situations, it is mainly descriptive, explanatory and exploratory.

After taking a close look at the territorial and maritime disputes currently taking place in the world, the authors come to three conclusions: 1) that the settlement of disputes is important for world peace; 2) that, despite the wide differences between the methods used within the framework of international law, they converge and

intertwine; 3) that each of these methods allows sufficient flexibility to provide states with a margin to manoeuvre so that they can promote their preferred solutions.

Chapter 3 deals with what the authors call "strategic dynamism for the peaceful resolution of disputes". It begins by asking the question: What are the factors that make states seek different routes to a peaceful settlement? In reply, they offer a comprehensive theory which they call "the theory of strategic choice". According to this theory, the motive behind the choice of a particular route for resolving a territorial or maritime dispute peacefully is to minimize the "uncertainty factors" and boost the prospects for gaining maximum advantage at one's opponent's expense. It is dynamic insofar as the strategy the state chooses consists of two distinct, separate but interconnected phases: first, it decides on its route to a peaceful resolution of the conflict (negotiations, good offices, arbitration or litigation) and then, having made that decision, it moves on to the second phase – a strategic choice within one of the chosen routes. With regard to the first phase, the authors maintain that states are driven to act strategically due to uncertainty over the course to be followed and a desire to emerge victorious from the conflict. However, they add, there are two mechanisms that mitigate the states' uncertainty while the routes to the peaceful solution are being chosen. The first of these is the lessons of past experience and the second is the relationship between national law and international law.

Chapter 4 is concerned with the second strategic choice phase after a particular route to peaceful settlement has been decided upon. Here we find that there is "a choice within a choice". After agreeing on a particular route, both parties to the dispute or conflict endeavour to devise the outlines of a plan and define what the concept of "strategy" means to them, in the hope of minimizing uncertainty and maximizing the potential benefit to themselves. Here, the authors point out the wide differences between different states' behaviour models, regardless of external factors, and note that every state involved in a dispute is guided by strategies that it has designed in order to guarantee the greatest possible degree of success (from its own point of view) for its efforts to resolve its conflict peacefully. Consequently, all states that are actively involved in trying to find a peaceful settlement will focus their efforts on two things: the demands, and the measures to be taken. This means that a disputing state's demands need to be worded in such a way as to have the greatest possible effect on the way the measures are implemented, and this in turn means that its legal arguments should be properly prepared and presented and its demands for sovereignty should be formulated within the framework of its chosen strategy. This entails focusing on those aspects of the dispute that can be to the advantage of the state making the demands, while ignoring those that might not. Here the state may influence the choice of rules and measures, as well as the selection of those involved in devising and implementing those measures.

Chapter 5 considers the authors' research project plan and methodology, though this time from a practical rather than a theoretical angle. Their methodology is based upon a "quantitative data analysis" in which they examine the basic relevant documents on the efforts that were made between 1945 and 2015 to resolve territorial conflicts peacefully. They have also conducted a series of interviews and face-to-face encounters, with particular focus on the arbitration over the 2013–2016 dispute between the Philippines and China. This chapter also offers an overview of the models for settling regional disputes and conflicts since the Second World War in Europe, the Americas, Africa, the Middle East, Asia and Australasia. The authors also discuss the "qualitative data" on the same period that they have used in their book. They point out that they have deliberately opted for a hybrid and multi-layered approach to their research. One of their observations is that Middle Eastern states tend to prefer mediation and good offices in resolving their conflicts, while these routes are rare in Europe, which prefers negotiation.

The next chapter includes an "empirical analysis" of the "strategic choice" phase, in which a decision is made with regard to the body to whom the claim is to be submitted. It lists the options of the states concerned and offers what the authors describe as "solid" arguments for and against the different parties' cases which determine their "strategic behavior" in defence of their positions. Here there are two crucial factors that influence a state's chosen course of action: the lessons of the past and the status of international law within its national legal system.

The final chapter before the Conclusion deals with the implementation of the "strategic choice" phase and looks at the state that has decided on a particular course of action as well as the state against which the claim is made and which has agreed to a resolution of the dispute. The example cited here is the dispute between the Philippines and China, which was submitted to arbitration. Citing a substantial body of evidence including statistics and witness statements, the authors assert that states that choose the "strategic route" to the resolution of their differences opt for one of a number of possible lines of approach. Since neither party can say for certain what the outcome will be – particularly in cases of arbitration and litigation – it is vital that the claimant state should formulate its demands and follow the processes meticulously. In doing so, it will minimize the uncertainty surrounding its case and mitigate the danger of failure. Hence we find that, throughout the search for a solution, states tend to resort to a type of "manoeuvring", either in the way they formulate their demands or in their approach to the processes. The authors' evidence for this is supported by a vast body of legal documents as well as interviews with officials, decision-makers, judges, lawyers and politicians. They conclude that, although international law calls in the strongest possible terms for disputes to be resolved peacefully, trickery and cunning are usually the preferred strategy of the states involved.

Finally, as the authors take a general look at the theories, arguments and outcomes of the cases reviewed, they stress that the ideas they have put forward are practicable and timely. As they also point out in the Introduction to their book, they consider its basic thesis in a wider context – the context of the current literature available about international law and international relations. In doing so, they recognize the profound implications of the conflict resolution options for decision makers and international jurists and emphasize that, if we are to understand the dynamics of peaceful territorial and maritime conflict resolution properly, we need to be aware of the complexity and multifaceted nature of the stages of the settlement process. This complexity and multifacetedness are due to the tangled judicial character of disputes over sovereignty, as well as the convoluted nature of most of the ways of resolving them – particularly arbitration and litigation. All in all, this creates a fertile environment for strategic behaviour, and "strategy" is the main theme of this book.

VI. THE BOOK'S MAIN CONCLUSIONS

The book's main conclusions may be summarized as follows:

1 - Many human experiences are essentially an amalgam of individual decisions, and it is they that provide the basis for states' strategic choices.

2 - Every method of resolving disputes peacefully is a reflection of the effectiveness and value of international law; it is invariably implemented within the context of the difficult conditions arising from the global balance of power. The authors' own stance here may be described as a kind of "political realism".

3 - The authors agree with the subject of one of their interviews, who stressed the importance of a range of different options for resolving disputes peacefully. They quote him as saying: "In the end, a range of alternative options is the best way of resolving international disputes."

4 - All available peaceful conflict resolution measures – from negotiations to litigation – enjoy a degree of flexibility that allows the disputing states to try to promote their own interests.

5 - The main point the authors make in this book is that the best route to conflict resolution available in international law is the one that gives equal weight to both parties. However, a combination of other factors may lead them to choose other routes, including negotiation and other binding and non-binding solutions.

Finally: The authors have implicitly adopted a system known as "modest epistemology". That is to say, they espouse the idea of presenting knowledge without making great claims for it – or rather, they assert that, although they have tried to follow the principle of "comprehensiveness", total comprehensiveness is epistemologically impossible. Therefore, they do not claim to be familiar with all

the dynamics pertaining to the resolution of territorial and maritime disputes, because it is not possible to be so. Despite the fact that they examine numerous examples of the different types of strategic behaviour engaged in by various states, they concede that certain social, political and strategic matters will always remain beyond the researcher's ken.

The authors also accept that their theory – like any social theory – is based on a simplified model, and consequently it cannot cover every aspect of highly complex disputes. After all, it is impossible to take account of every factor that is significant for the resolution of a dispute, since (for various historical, geographical and political reasons) every dispute or conflict is in its own way unique. Furthermore, the decisions on settling a dispute are in the hands of individual leaders, parliaments, lawyers, etc. and the way they conduct their affairs is not always entirely rational.

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