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liability laws raises the question of the extent to which the Court will allow national statutes of limitation to stand. In most member states the state incurs liability only under very restrictive substantive and procedural conditions. * Thus national liability laws may provide member states with an effective shield from liability in most cases and with an effective cap on retrospective payments of damages. ***

<div align="center">CONCLUSION</div>

The existing literature on legal integration in the EU poses a stark dichotomy between two views of ECJ–government interactions: the legal autonomy and political power perspectives. This article has developed a theoretical framework that is subtler and more balanced than either of these perspectives. Moreover, we have subjected our view to empirical tests that are much less vulnerable to the "sampling on the dependent variable" critique. Our theoretical framework generated three independent hypotheses about the strategic interactions between the Court and member governments. These hypotheses were then tested against a carefully selected set of cases in which we sought to hold constant as many factors – other than those of direct bearing on our hypotheses – as possible.

The starting point of our theoretical analysis is that the ECJ is a strategic actor that must balance conflicting constraints in its effort to further the ambit of judicial review in the EU. On the one hand, the Court's legal legitimacy is contingent on its being seen as enforcing the law impartially by following the rules of precedent. On the other hand, the Court cannot afford to make decisions that litigant governments refuse to comply with or, worse, that provoke collective responses from the EU governments to circumscribe the Court's authority. Understanding how these conflicting constraints function requires careful delineation of the legal and political conditions in particular cases.

The empirical analysis generated strong support for our three hypotheses. First, the greater the clarity of EU treaties, case precedent, and legal norms in support of an adverse judgment, the greater the likelihood that the ECJ will rule against litigant governments. Second, the greater the costs of an ECJ ruling to important domestic constituencies or to the government itself, the greater the likelihood that the litigant government will not abide by the decision. Third, the greater the costs of a ruling and the greater the number of EU member governments affected by it, the greater the likelihood that they will respond collectively to rein in EU activism – with new secondary legislation revisions of the EU treaty base.

So much for the normal science. *** The ECJ is manifestly neither master nor servant of EU member governments. As is more generally true with respect to scholarship on European integration, engaging in labeling debates – neofunctionalism versus intergovernmentalism, for instance – is unproductive. Instead, research should concentrate on deriving empirically testable propositions from logical theoretical arguments and then systematically evaluating them against the data. This article represents our attempt to do this in the context of the strategic interactions between the ECJ and EU member governments.

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PART VII

OTHER SUBSTANTIVE AREAS OF INTERNATIONAL LAW

Scraps of Paper? Agreements and the Durability of Peace

Virginia Page Fortna

Why does peace sometimes last and sometimes fall apart? What, if anything, can be done to enhance the durability of peace in the aftermath of war? Some cease-fires fall apart within days or months, others hold for years, while others last indefinitely. Why, for example, did a cease-fire in the Arab-Israeli war in 1948 fail within three months, while the next one lasted for years? Why has peace so often faltered between India and Pakistan but held, despite ongoing tensions, between North and South Korea? Surprisingly little theoretical or empirical work has explored this important question.

States have devised a number of mechanisms to try to make it easier to maintain peace. These mechanisms are often implemented as part of a cease-fire agreement. States set up demilitarized zones, accept international peacekeeping missions, establish dispute resolution procedures, sign formal agreements, and undertake other steps to try to enhance the prospects for peace. Do these measures work? If so, why? This article begins to answer this question by analyzing the duration of peace after

international wars ending between 1946 and 1997. It draws on and develops theories of international cooperation to argue that measures such as these help enemies overcome the cooperation problem inherent in the aftermath of war. Students of international relations have long drawn on contracting theory and the new economics of organization literature to examine how actors can achieve cooperation even as anarchy makes it impossible to write enforceable contracts.[1] Scholarship in this vein points to a number of ways in which cease-fire agreements might influence the chances of maintaining peace. I argue that mechanisms within agreements can make durable peace more likely by changing the incentives to break a cease-fire, by reducing uncertainty about actions and intentions, and by preventing accidental violations from triggering another round of fighting. If this argument is correct, the content of cease-fire agreements should affect whether peace lasts. Individually and collectively, these measures should be associated with more durable peace, all else being equal.

Scholars of international relations in the realist tradition likely would argue that cease-fire agreements and the measures within them are at best epiphenomenal. In these scholars' view, agreements may reflect other factors that affect durability, but arguments that they themselves shape the chances for lasting peace are idealistic. In this view, agreements are merely "scraps of paper." They are not binding in an anarchical system and should have no independent effect on international behavior, least of all on decisions about war and peace.[2] To test the effects of agreements on the durability of peace, one therefore needs to control for other factors that affect the baseline prospects for peace. If, once these variables are included, agreement mechanisms have no effect, then one can conclude that agreements are only scraps of paper. If, however, agreements matter even when the baseline prospects are accounted for, this would support the argument that even deadly enemies can overcome the obstacles to cooperation.

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The first section of this article develops cooperation theory to explain how specific mechanisms within cease-fire agreements might affect the

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[1] See Coase 1988; Martin 1993; Moe 1984; Oye 1986; and Williamson 1985.
[2] This is akin to the argument that international institutions are epiphenomenal. Mearsheimer 1994. See also Mearsheimer 2001. If agreements have no effect, however, it is not clear why states bother to write them. Leeds, Long, and Mitchell 2000.

durability of peace. This argument suggests that measures such as the withdrawal of forces, creation of demilitarized zones, formal cease-fire agreements, peacekeeping, third-party guarantees, and dispute resolution procedures should help foster peace that lasts. The more of these measures implemented, the longer peace should last, all else being equal. This section also lays out the counterargument and explores other variables that might be expected to affect the baseline prospects for peace. *** The second section describes the econometric model and the data set of cease-fires in international wars used to test these hypotheses. The findings, presented in the third section, show that agreements are not merely scraps of paper; rather, the implementation of specific mechanisms within cease-fire agreements can help make peace last. Strong agreements lead to more durable peace.

In this study I define peace merely as the absence of war. I do not distinguish between relations that become very friendly and those that remain acrimonious despite the absence of violence. Under my definition, North and South Korea have been at "peace" for half a century. Clearly, not all varieties of peace are equally desirable, nor does stability necessarily coincide with social justice. Nevertheless, most wars cause poverty, disease, and dislocation, and all entail the large-scale loss of human life. Repeated conflict only exacerbates these tragedies. This study not only indicates that states can overcome obstacles to maintaining peace in war-torn areas, but also identifies the most effective ways of doing so.

COOPERATION THEORY AND AGREEMENTS

Maintaining peace in the aftermath of war requires cooperation. Because war is costly, there is shared interest in avoiding renewed hostilities. This shared interest, however, does not automatically lead to peace. Recent belligerents have deeply conflicting interests and strong incentives to take advantage of each other.[3] They also have good reason to fear each other's intentions. Cooperation is therefore difficult to achieve. I argue that cease-fire agreements can foster cooperation in several ways, by changing incentives, by reducing uncertainty about actions and intentions, and by controlling accidental violations of the cease-fire.

This argument rests on three assumptions: (1) that states are rationally led [but not that they are unitary actors;] (2) that war is costly, and not desired for its own sake; and (3) that each ex-belligerent has incentives to

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[3] Keohane 1984; Oye 1986.

take advantage of its opponent, or good reason to fear its opponent's intentions. I do not assume that both belligerents reach a cease-fire on equal footing.[4] There are usually winners and losers in war, and at least one side's acceptance of a cease-fire may have been "coerced." However, unless one side is completely eliminated in war, both sides can impose costs on each other, and the problem of cooperation maintains.[5]

* * *

Conflicting interests give belligerents an incentive to break the cease-fire in a bid to make unilateral gains on the battlefield. This is the familiar game of prisoner's dilemma. There may also be cases where neither side would prefer to attack, even unopposed. However, there is no easy way for actors to know this. In an atmosphere of deep mistrust in the aftermath of war, each side has good reason to fear attack from its opponent. Uncertainty and fear about the other's intentions can undermine cooperation even where perfect information would automatically yield a cooperative outcome. Security dilemma dynamics and their spirals of fear and hostility are especially likely among states who have recently engaged in mortal combat.[6] With communication channels severed during the war, and enemies likely to assume the worst about each other, incidents along the cease-fire line, even if accidental or the result of rogue forces, can reignite war. Peace is precarious.

A hypothetical case helps illustrate the obstacles to peace. Imagine two states that have just fought a war over a piece of territory (Israel and Syria in 1973, perhaps, or El Salvador and Honduras after the 1969 Football War). The war was costly and the two states would prefer not to fight again, but they would each like more of the disputed land, preferably all of it. Both believe it to be rightfully theirs, and domestically, occupation of any part of it by the enemy is seen as a travesty. The side that lost territory in the war has an incentive to try to win it back, and the side that gained may hope it can now claim more. Both sides therefore have incentives to try to encroach upon the other, or even to make a dramatic advance, to push the cease-fire line farther toward the other side.

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[4] For the sake of simplicity, I discuss the problem of cooperation as involving only two states. A number of wars in this study have multiple belligerents. These are split into separate dyadic observations in the quantitative research discussed below.

[5] Kecskemeti 1964. The only case examined here in which one side was eliminated by the other is South Vietnam's fall to the North in 1975.

[6] Jervis 1978. In assurance games such as stag hunt, it is the grave payoff of being attacked and the difficulty of assessing intentions that makes cooperation risky.

Moreover, both states have good reason to fear encroachment or attack by the other. These fears have likely been exacerbated by leaders' inflammatory remarks for domestic consumption. Both sides will be particularly wary of military maneuvers, resupply efforts, or anything that might be a precursor to a new attack. When the fighting stopped, soldiers were likely left in close proximity to their enemies, facing each other "eyeball-to-eyeball" across the cease-fire line. The chance of troops firing across the line or of skirmishes as each side tries to improve its position is quite high. If irregular troops were involved in the fighting, or if command and control are somewhat loose, there may be incidents of unauthorized attacks or advances. In such a tense atmosphere of mistrust, with normal diplomatic channels cut, such small clashes can easily escalate. Whether through deliberate action, spirals of fear and preemption, or accident and involuntary defection, the probability of war erupting anew is high.[7]

Although both sides are better off with peace, they cannot simply declare peace and leave it at that. Their commitments to maintain peace are not credible.[8] An actor with hostile intentions has an incentive to say it will abide by the cease-fire so that its partner will cooperate and be "suckered" into letting down its guard and perhaps leaving itself vulnerable to attack. In international relations, of course, there is no external enforcement power to prevent actors from such cheating. This is the central problem of cooperation under anarchy in international relations.

So how do deadly enemies ever achieve peace? Cease-fire arrangements rely on reciprocity and mutual deterrence. Each side stops fighting in exchange for the other side doing the same. If either breaks the cease-fire, the other will respond in kind. It is the prospect of return fire that deters attack. This is so central to the notion of a cease-fire that it may seem quite obvious. However, for reciprocity and deterrence to work, several things must be true: the cost of reinitiating conflict must outweigh the incentives to attack; it must be easy to distinguish

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[7] Reiter (1995) found preemption to be rare as the sole cause of war. But conflicts that start or escalate to war through preemption are most likely among deadly enemies, such as Israel and its Arab neighbors in 1967. Similarly, wars rarely start purely by accident, but escalating clashes, often at least partially the result of accidents or unauthorized action, can contribute to the spiral toward war. Such was the case between India and Pakistan in 1965, and arguably again in 1999. Escalating clashes led to the second war between China and Vietnam, and to serious fighting short of full-scale war between Honduras and El Salvador in 1976.

[8] For analyses of the problem of credible commitments as an obstacle to peace see Fearon 1995; and Walter 2001.

compliance from noncompliance; both sides must be reassured about each other's intentions, especially if there is a military advantage to striking first; and accidents must be prevented from triggering another war. These requisites suggest both the obstacles to peace and strategies for overcoming them.

Cease-fire agreements can employ three types of strategies to ensure that peace lasts: changing incentives by making it more costly to attack; reducing uncertainty about actions and intentions; and preventing or controlling accidental violations. These strategies suggest specific observable mechanisms, the effects of which are tested below.

Altering Incentives

*** [There] are steps belligerents and the international community can take to increase the costs of an attack. These steps widen the bargaining space between belligerents and make another bout of war less likely. Adversaries can tie their own hands by physically constraining their ability to attack. Withdrawal of troops from the front line, creation of a demilitarized buffer zone, and arms control make remobilizing for war more difficult. These actions also make a successful surprise attack much less likely.

Belligerents may also be able to alter incentives by declaring their cease-fire formally. By signing a formal agreement, states invoke international law. Of course, with no higher authority to enforce it, international law is not binding in the way that domestic law is. International agreements can be broken, but breaking them risks losing international aid and military support, and legitimizes retaliation by the other side. Formal and public declaration of a cease-fire thus invokes international audience costs. *

Actors may also turn to outsiders to help them enforce a cease-fire. Commitment by a third party to guarantee the peace serves as a deterrent, again by raising the cost of noncompliance. An external guarantor takes on some of the responsibility for retaliation in the event of defection. The presence of peacekeeping troops interposed between forces may also serve as a physical and reputational buffer to ensure the cease-fire.

Reducing Uncertainty About Actions and Intentions

Agreements can reduce uncertainty by specifying the terms of a cease-fire. Marking the exact location of the cease-fire line provides a focal point that can help prevent "salami tactic" attempts to push the line to