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Boko Haram: Shekau's Demise — Halcyon or Nadir for Sub-Saharan Africa's Fight Against Terrorism?

Babatope Matthew AJIBOYE

Abstract: In Sub-Saharan Africa, no terrorist group has been as lethal as Boko Haram, under the leadership of Abubakar Shekau. Barely more than a decade, since the group's inception, the entire Sub-Saharan Africa has been engulfed by deadly activities of the dreaded terrorist group. From evidence, more than 40,000 people have been killed, over 2 million people have been displaced, scores of forced migrants have been scattered across West Africa, properties worth billions of dollars have been destroyed, and governance in the sub-region has, essentially, been ineffective since 2009, when the group launched its violent campaign. Although there were responses both at the local front and regional front to hold back the menace of Boko Haram, these efforts were repeatedly met with repression under Shekau. However, on June 7th, 2021, there was a turn of events, as Abu Musab Al-Banawi, leader of the Islamic State of West Africa Province (ISWAP), confirmed the death of Shekau arising from a confrontation with this rival group. The question posed by this atypical occurrence is, 'can we convincingly say Shekau's death means the end of the road for terrorism in Sub-Saharan Africa?' This article argues the opposite. Rejigging the memory of Mohammed Yusuf's extermination by the police, Shekau's influence, and the dominance of the Islamic State of West Africa Province (ISWAP), as the radical points of departure, the paper sees Shekau's death as an alleyway for dynamic terrorism in Sub-Saharan Africa.

Keywords: Shekau, Halcyon, Nadir, Lethal, Terrorism, Sub-Saharan, Africa.

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Introduction

Abubakar Shekau, alias 'Darul Tawheed', succeeded Mohammed Yusuf, the erstwhile spiritual leader of the deadliest African terrorist group, Boko Haram, in July 2009. As the supreme leader, he masterminded various attacks in Nigeria, Niger, Cameroon, Chad, and other neighboring countries.

These deadly attacks led to the deaths of asymmetrical civilians, members of the Civilian Joint Task Force (CJTF), and personnel of the Multinational Joint Task Force (MNJTF). The trends and operations culminating to attacks, which were superintended by Shekau, lasted more than a decade. This made the terrorist group, under Shekau, to be the toughest assignment the Nigerian Armed Forces, Civilian Joint Task Force (CJTF) and Multinational Joint Task Force (MNJTF) had to face within that time.

In 2005, Patrick Chabal alleged that “conflict seems to be a hallmark of African societies” (Chabal, 2005, p. 1). Certainly, a range of violent conflicts have ravaged the West of Sub-Saharan Africa both in the past, and in recent times, making it the subcontinent’s textbook of conflicts. These conflicts have unleashed a subterranean blow on the continent’s human and natural resources. Notable among such conflicts include, the Nigerian Civil War (1967–1970), the Chadian Civil War (2005–2010), the February 18 violent coup d’état in the Niger Republic, and the Cameroonian Civil War, otherwise called the ‘Ambazonia War’ (2017–present). However, since Nigeria, Chad, and Niger Republics survived the civil wars and the violent coup d’état that followed, there has not been another violence that has shaken the entire West Africa Region like the Boko Haram insurgency.

No doubt, the Islamic jihadist group has wreaked havoc on Nigeria and neighboring countries; loss of life has become a regular occurrence in these regions; and focused governance has become a fairytale. Governments’ policies and programs have, constantly, been distracted by this terrorist group’s actions. Thurston (2010) once avers that Boko Haram does not only pose an existential threat to the states where it has ravaged, but also it has disrupted governance and caused humanitarian emergency around Lake Chad. Exactly a decade after the foregoing derisory situation was reported, it is evident that the figures of people killed since 2009 have risen to above 100,000, and 2.4 million have been displaced (Maza *et al.*, 2020). Thus, the terror rendition of the insurgent group in Sub-Saharan Africa has emerged as one of the greatest threats to human security in Africa and the Lake Chad region (Oyewole, 2015).

Still in the rigmarole of defacing the terrorist group, precisely in May 2021, various Nigerian media outlets aired the news of the death of the warlord and tied it to a major confrontation with the Islamic State of West Africa Province (ISWAP), a rival and secessionist group that had ties with Shekau’s Boko Haram until 2016. Stemming from the news of his death, there was widespread jubilation by Nigerians, especially in the war-torn North-East region and in the neighboring republics of Chad, Niger, and Cameroon. The public fete was grossly affixed to the implication that Shekau’s death had signaled the end of the conflict and terrorism in Nigeria and other Sub-Saharan African countries. Keeping in mind that ‘a tree does not make a forest’, and that counting one’s egg before it hatches, as well as the public fanfare that followed Shekau’s death, accounted for a lot of unanswered questions: What is the region’s springboard for Boko Haram

like? How did the ideology and extermination of Shekau's predecessor fuel terrorism in the region? Will Shekau's death be a source of strength or weakness for terrorism in Sub-Saharan Africa? This paper seeks to answer these riddles, as well as many others.

Springboard for Boko Haram Formation

As a moniker, Boko Haram is rooted in the Arabic name *Jama'atu Ahlis Sunnah Lidda'awati Wal Jihad* (People Committed to the Propagation of the Prophet's Teachings and Jihad). The Islamic Jihadist group began to gather abecedarian members and its momentum started to show sometime around year 2000. The group was firmly formed around the charismatic preaching of Mohammed Yusuf, who attracted hundreds of thousands of followers across Northern Nigeria, Cameroon, Niger, and Chad (Oyewole, 2015). As part of what gave the group ample reception in the region, its launch-pad was nurtured, fertilized, and lent a helping hand by the Sub-Saharan African countries' history of severe poverty and unfortunate governance, also characterized by the stop-and-start experience between the military and civilian governments. Also connected to this is isolation of successive governments from the people they governed (Campbell, 2014).

Mohammed Yusuf's Ideology and Extermination

Yusuf, obviously, was the symbol and vanguard of *Jama'atu Ahlis Sunnah Lidda'awati Wal Jihad* (People Committed to the Propagation of the Prophet's Teachings and Jihad). He was born in the year 1970 in Yobe State, a neighboring state to Borno State. He relocated to Maiduguri, the capital of Borno State. By the turn of the century, Yusuf began preaching and gained prominence among adherents to the point that he became a household name on the lips of the masses in and around Maiduguri, the capital of Borno State, in Nigeria. This was soon evident as he was co-opted into the state's Sharia law implementation body, not only as a virile member, but also as an advocate/ambassador, whose role was championing the cause and seeing to the actualization of Islamic jurisprudence. Apparently, part of what gave him an edge over other Islamic clerics was his verse knowledge of the Quran, buoyed by his Arabic education, oratory rendition, and radical ability to draw multitudes to him. This played a huge part in his enthronement, as the new leader, in 2002, when he was chosen to lead the Islamic sect when the pioneer leader, Abubakar Lawan, embarked on studies in Saudi Arabia.

The *Jama'atu Ahlis Sunnah Lidda'awati Wal Jihad* leader's ideology was often articulated in fiery sermons railed against the Nigerian state's corruption and propagation of Western education and democracy. He also bemoaned the backwardness of the Northeast region of Nigeria. However, the stand against democracy and Western education formed the two main pillars of his ideology. The latter was much more explicit and overt in Boko Haram than in other jihadist movements (Afzal, 2020). In one of the rhetorical and conspicuous quotations attributed to Yusuf, he said, "the system

represented by the *yanboko* is unjust, secular, and has no divine origin. It is therefore un-Islamic, which in turn accounts for its ineptitude and corruption” (Isa, 2010, p. 332). These were the dynamics the sect under Yusuf was hell-bent on altering. It was obvious that Yusuf took advantage of the attitude toward religion, democracy, and education that already existed in the North. Yusuf did not ‘spark this up swell in religious fervor, but he has somehow harnessed a zeitgeist’ (Walker, 2016, p. 158).

Yusuf’s initial followers were largely secondary school students and primary school pupils who were attracted to the rhetorical teachings and sermons delivered regularly in Yusuf’s Mosque. Sooner or later, they all abandoned their studies to team up with the bandwagon. As his adherents grew, so his influence and authority increased. There were proven reports that mosques and madrassas were hot spots for Boko Haram recruitment. For instance, Anneli Botha and Mahdi Abdile’s (2019) interviews of 119 former Boko Haram fighters confirmed that over a quarter of them were said to have been introduced to the group through mosques (14%) or madrassas (13%). Apart from these means, the Islamic movement members were also drawn from various backgrounds, including unemployed graduates, the *alimajirai* (downtrodden) children, and the browbeaten youths. The recruitment network also cuts across other neighboring countries; it drew (and still draws) members from Cameroon, Chad, Niger, and Sudan (Onuoha, 2014).

The movement enjoyed a certain level of political face in its activities before 2009. It was well established that a pact existed between the leader (Yusuf) and the then governor of Borno State, Ali Modu Sheriff, to allow Yusuf to conduct his religious activities, with the assurance of realization of Sharia in Borno as long as he returned the favor by convincing his adherents to massively vote for Alimodu Sheriff in the 2003 Governorship Election. However, the pact between the two became kaput right after Sheriff was elected as governor of the state. Yusuf seemed to have renegotiated the guarantee of a stronger Sharia, while Sheriff wanted his help in the reelection bid. Eventually, when the tide turned against Boko Haram and Sheriff realized he no longer needed Yusuf and his Boko Haram followers, he directed ‘Operation Flush’ to target them. As a result, Mohammed Yusuf and 700 of his followers were killed in 2009. Thus, he was succeeded by Abubakar Shekau whose leadership provided that Yusuf’s dispensation was less radical compared to his successor. Events after attested that “the group became radically more deadly after that, taking on its current incarnation” (Afzal, 2020). His decade-long, bizarre terrorist activities will be revealed in the following section.

Shekau’s Reign of Terror

Events that brought Abubakar Shekau to the glare of publicity were the killings of several members of the group and the factional leader of Boko Haram, Mohammed Ali, in a confrontation with the Nigerian Army in 2002, at Kanama town in the Yunusari

Local Government Area of Yobe State, next to the Niger Republic, and the killing of more than 700 adherents, along with the extermination of the revered leader of the Islamic movement, Mohammed Yusuf, at the hands of the Nigerian Police in 2009. This led the group to regroup in order to avenge the gruesome killings of its revered leader. Thus, in 2010, the sect's reprisal mission was made known, hovering on avenging the so-called atrocious killing of the group's charismatic leader and the arbitrary arrest and extrajudicial execution of other steadfast members spearheaded by the Nigerian police in the latter part of 2009.

As mapped out in the sect's stratagem, first was the adoption of Yusuf's hardline top deputy, Abubakar Shekau as its new spiritual leader and the redefinition of its tactics that involved perfecting the traditional hit-and-run attack strategy, and adding new, flexible violent tactics (Onuoha, 2014). The leadership of Abubakar Shekau for over a decade cannot be rivaled. This can be weighed from the levels of recruitment, funding, motivation, and radicalization of members of the sect, using every available opportunity. Besides, Shekau was direct in approach, as he constantly released videos, leaflets, audios, and messages claiming responsibility for attacks; he also made direct threats of his intention to carry further attacks on a particular target or area. In 2012, he was heard in a video clowning saying that 'I enjoy killing... the way I enjoy slaughtering chickens and rams' (BBC News, 2021).

Under the hardnosed Shekau, notable attacks were successfully coordinated in the epicenter of Boko Haram's violence (Nigeria) and other Sub-Saharan African nations, including the 7 September 2010 attack on the Federal Prison in Bauchi State, where over 721 inmates and 150 members of the group were freed. On June 16, 2011, the group launched an attack on the Nigeria Police Force Headquarters in Abuja with a suicide bomber who drove a car bomb the building killing six people. Two months later, on August 26, 2011, another car bomb explosion was staged at the United Nations building in Abuja, killing 21 people, and injuring over 60 others. On January 20, 2012, 178 people were killed by a bomb blast and shooting spree, targeting police stations in Kano. On August 11, 2013, Boko Haram killed 44 worshipers inside a mosque in Konduga, Borno State. On February 26, 2014, the insurgents killed 59 boys at the Federal Government College in Buni Yadi, Yobe State. On April 14–15, 2014, almost 276 female students were kidnapped from the Government Girls Secondary School, Chibok in Borno State. In January 2015, Boko Haram seized the Nigerian Military Base, Baga, a town in Borno State. On February 19, 2018, 110 schoolgirls were abducted from the Government Technical Girls College, Dapchi, Yobe State.

The insurgency group extended their attacks to other neighboring countries. On March 22, 2019, 23 Chadian soldiers were brutally murdered by Boko Haram. On March 23, 2020, the sect attacked Chadian troops stationed in Bohoma, killing 98 Chadian soldiers and injuring scores. On December 24, 2020, Boko Haram attacked four islands

on the border lake between Chad and Cameroon, killing 27 people and kidnapping 12 others (UNOCHA, 2020). In June 2019, Boko Haram attacked an area called Darak, killing 21 Cameroonian soldiers and 16 civilians, while in the Mozogo, far North region of Cameroon, on January 8, 2021, 14 civilians, including 8 children, were killed by the insurgents; they shot at residents and looted hundreds of homes in that region. The incessant attacks by the Islamic terrorist group in Cameroon led to many people fleeing their homes for safety. In the same vein, the Boko Haram violence in Cameroon has led to a major humanitarian crisis, forcing over 322,000 people away from their homes since 2014, including 12,500 in December 2020 (Human Right Watch, 2021).

Responses from the Multinational Joint Task Force (MNJTF) and Civilian Joint Task Force (CJTF)

In 2015, the Multinational Joint Task Force (MNJTF) was established by the African Union (AU) with its headquartered in Ndjamena, Chad. Although it has been in existence since 1998 under the umbrella of the Lake Chad River Basin Commission (LCBC), it was revised and endorsed on January 29th to deploy 10,000 soldiers (Nigeria: 3,250; Chad: 3,000; Cameroon: 950; Benin: 750; and Niger: 750) (Cold-Ravnskilde & Plambech, 2015). At the launch of the operation, a little over 8,000 troops were drafted from the Benin, Cameroon, Chad, Niger, and Nigeria armed forces. The regional military alliance was set up to jointly patrol their borders and counter the excesses and attacks of the Boko Haram jihadists across the Lake Chad Basin. This multinational security architecture received technical, financial, and strategic assistance from international organizations such as the European Union (EU), the French Government, the United Kingdom, and the United States, which buoyed their operations against the terrorist group in the Lake Chad axis.

Nonetheless, the activities of the MNJTF have been met with mixed reactions. To a large extent, the joint operation has yielded significant progress in combating Boko Haram and its Siamese twin, Islamic State of West Africa Province (ISWAP). Their working together has ensured that troops from various countries learn from one another. Apart from this, ideas and modern practices required for cross-border security are promoted, and tactical coordination is strengthened. In short, it has helped in decimating Boko Haram's spread along the Lake Chad Basin. A significant impact was recorded in 2015; the group was dealt with, which resulted to its split into more than two factions. Between June and November 2016, the MNJTF recorded several consecutive victories in the battle against Boko Haram around Lake Chad and in Borno State through a special operation known as *Operation Gama Aiki* (*finish the work* in Hausa dialect). This military operation included simultaneous collaboration in all four sectors (Baga in Nigeria, Baga-Sola in Chad, Dipafa in Niger and Mura in Cameroon) (Doukham, 2020). Success was recorded in November 2016 by the Baga-Sola 2 Battalion, based in western Chad. The attack resulted in the surrender of at least 240 Boko Haram fighters. Between February and

May 2016, operations in the 2nd sector, based at Mura, in Cameroon, neutralized many Boko Haram fighters. The force secured the release of hostages, destroyed some of the organization's training camps, and seized many weapons (Doukham, 2020).

Despite the successes recorded against the dreaded Boko Haram group, the MNJTF strides have been momentary and tweaked as the Jihadist factions have consistently weathered offensives. Their resilience is owed partly to their ability to escape to other areas and partly, to the inability of the states themselves, particularly Nigeria, to follow military operations with efforts to rebuild and improve conditions for the residents in recaptured areas. For instance, in March 2020, a militant assault on a base on Lake Chad was one of the conflict's bloodiest, which led to the killing of about 90 Chadian troops (International Crisis Group, 2020).

In 2013, the Civilian Joint Task Force (CJTF), a group populated by youth emerged with the enthusiasm to defend their communities against the onslaught constantly launched by the terrorist group in Borno and other states in North-East Nigeria. CJTF commonly known as *Yan Gora*, a local initiative, reacted to the security challenges posed by Boko Haram in North-East Nigeria. It was a 'child of necessity,' compelled by the menace of Boko Haram, attacking innocent citizens of Borno State, and the incapacity of the Nigerian military forces to deal with the threats in the early days of the insurgency (Bamidele, 2020). The civilian JTF emerged and volunteered to assist the Special and Joint Task Force in the counterterrorism campaign. The civilian JTF was made up of both the young and old civilians armed with mundane weapons such as bows and arrows, swords, clubs and daggers that operate under the supervision of civilian JTF sector commanders. The civilian JTF began as a community effort and later, it became part of the joint effort with the main security forces to help fight Boko Haram (Bamidele, 2016). The efforts of the CJTF was effective to a point, as the Nigerian military ultimately came to rely on it for intelligence gathering in some areas, and manning checkpoints in other areas (USIP, 2018).

In the seeming interminable war against insurgency in the Northeast region of Nigeria, the CJTF has, indeed, played a prominent role. Hassan claims that "the civilian JTF structures make up about 60 percent of all counterterrorism mercenaries, and that they support the government's special military Joint Task Force (JTF) in combating terrorism" (Hassan, 2014). The CJTF, working as an alternative counterterrorism outfit, has been successful in fulfilling its commission. However, success here is, partly, attributed to the fact that they speak the same language and understand the terrain better than anyone else. The group has continued to dislodge Boko Haram activities in the region, helping to recover towns and villages under Boko Haram siege, rescuing women in the Northeast, and helping to identify Boko Haram members who are shielded by some local people (Bamidele, 2016).

Shekau's Demise:

Weakness or Strength for Terrorism in Sub-Saharan Africa?

On June 7th, 2021, news filters, like whirlwind covering the thin air, circulated that the daredevil terrorist leader, Abubakar Shekau, had, at last, been killed. Unsurprisingly, the news was initially dispelled, or trivialized because there had been quite a few rumors of Shekau's death aired by both the Nigerian Army and media outlets in the past, only for Shekau to re-emerge, and dismiss the claims, and consequently, affirm his continued existence in a tomfoolery manner. He even issued more threats against the military, the Nigerian government and the neighboring Sub-Saharan African countries. True to his words, such threats were turned into attacks at the time promised. Conversely, the latest seeming rumor of Shekau's death became real when Bakura Modu, alias 'Sahaba', the new leader of Boko Haram jihadists and the Islamic State of West Africa Province (ISWAP), a breakaway faction led by Abu Musab Al-Banawi, separately confirmed his death, as resulting from a major fight between Shekau's Boko Haram and Al-Banawi's ISWAP.

Bakura Modu's and Abu Musab Al-Banawi's statements put to rest every other tale enveloping the death of Shekau. However, one question that pops up in this is, can it be concluded that the war against terrorism posed by the Boko Haram and other factions has been won due to the unexpected end of Shekau the warlord? Believing that Abubakar Shekau's death spells the end of terrorism that has traumatized the Sub-Saharan Africa Province is ending is nothing but a wrap of oneself in airbag of 'self-deception' that re-buff or downsize the relevance, significance and magnitude of opposing evidence and coherent argument. The paradox has earlier been expressed that, 'it is unclear what Shekau's death will mean for Boko Haram' as a caveat, but it is unlikely to spell the end of jihadism in West Africa. Substantial and experiential facts have established that after the unjust extermination of Shekau's forerunner (Mohammed Yusuf), extremism was not only triggered but terrorism was taken to an entirely new level in Nigeria and other Sub-Sahara African countries.

Also, there is nothing to suggest that there will not be a reincarnation of such episodic attacks witnessed immediately after the death of Yusuf. Judging from the address delivered by Bakura Modu, which confirmed Shekau's death, where he urged the followers to be persistent and not be distracted by the death of their historic commander, Abubakar Shekau. In his words:

"Decapitating the enemy will help you spread your jihad... Do not let what is happening to you these days weaken your resolve to continue fighting the jihad, because Allah has not abandoned your efforts" (The Guardian, 2021).

Although Shekau's death mean so much to Boko Haram in terms of his fearsome leadership which he provided. It is apparent that Boko Haram remnants (fighters) are more

likely to pose serious threats because many of them have been disbanded and forced to operate as bandits living and operating among people. The new trend could even spell more doom than before when the terrorist group's abode is attacked. Because of the fact that the group has been transformed into a dangerously faceless and formless sect as a result of the death of their charismatic leader, any offensive operation fathomed against them will have to be undertaken with maximum thought. The attendant justification is that the sect will become very difficult to deface, as they coexist with the civilian populace. Apart from the fact that the sinister groups may adopt guerrilla warfare strategy, the possibility of a merger with other terrorist groups in the sub-region or further factions evolving from the beleaguered group could not be ruled out. Then again, it has also been emphasized that Shekau's fighters could decide to join forces with other extremist groups in the West Africa region or create a stronger faction. This would be potentially disastrous for the already embattled Northeast of Nigeria as it could lead to more infighting between the different groups, with civilians caught in the middle.

Ticking the clock's hand to the gazebo of the dominant Islamic State of West Africa Province (ISWAP) reinforced on the front foot of the exchange that consumed Abubakar Shekau, ISWAP leader Abu Musab Al-Barnawi confirmed that Shekau 'killed himself instantly by detonating an explosive... he preferred to be humiliated in the afterlife than get humiliated on earth' (BBC News, 2021). With this testimonial, it is clear that Shekau's death was neither orchestrated by CJTF nor MJNTF forces, or a combination of the two, but that he chose the path of suicide to save himself from the shame that would have been his lot had he surrendered or been captured alive by ISWAP forces led by his protégé, Abu Musab Al-Banawi. The act rekindles the insinuation that he could not be killed by any individual except Allah. Though he was not killed by the ISWAP, it cannot be totally ignored that he was hunted down by the group, which made him go the way of suicide. Going by this, one can easily affirm the dominance of ISWAP as the most lethal terrorist group in Sub-Saharan Africa. The group has become increasingly high-flying in the region and has carried out several victorious attacks against the civilian populace, the Nigerian military, the CJTF, and the MNJTF. To further prove the group's dominance and credential as the sole controller of terroristic activities in the region, on August 30, 2021, ISWAP fighters, in large numbers reportedly dislodged government forces in Rann, the Administrative Headquarters of Kala-Balge Local Government Area of Borno State in Northeast Nigeria. According to reports from fleeing members of the community:

"Many humanitarian workers have taken to the bush moving towards the Cameroon border trying to find their way out and avoiding the militants. They burnt down the military base and some vehicles. The soldiers abandoned their bases following more superior firepower from the insurgents. For now, we do not know what is going on in Rann as we are able to find escape route along with some security operatives" (TVC News Nigeria, 2021).

Recently, a good number of Boko Haram members have not only been seen teaming up forces with ISWAP, but also have been bequeathing ISWAP with the treasury, weapons, and ammunition in Shekau's armory, as both groups have basically become the potent forces to be reckoned with, when it comes to terror campaigns in Sub-Saharan Africa. Indicatively, this will mean fewer violent clashes between the two groups, and more attacks on Sub-Saharan African countries, as such a merger would only solidify terrorism. Again, it would mean that the ostensible Islamic State's hoof marks in West Africa would get a considerable boost; the region is further positioned for devastating attacks from the deadlier ISWAP group.

Conclusion

The demise of Shekau, the Boniface of Sambisa Forest and the Grand Mayor of Lake Chad Basin for well over a decade, has attracted unrestricted fete from various quarters. His demise was considered by many as a huge relief for the quartet, Nigeria, Niger, Cameroon, and Chad that are ominously affected by the activities of the much-dreaded Boko Haram group. Public judgment was influenced by the intensity of terrorism in Sub-Saharan Africa in the era of Shekau. Not only that, his hunt took a whopping decennial period to come to fruition albeit from an unexpected source. This led to asking if there can be a conclusion, that is, an end to terrorism in Sub-Saharan Africa. My rejoinder to the ensuing puzzle has drifted towards pessimism rather than sanguinity. This is premised on the caveat that 'ISWAP's rise and Boko Haram's decline is no cause for celebration but concern'. It is not unanticipated that this sort of response will attract queries like why?

From every available index, the death of Shekau means that the stencil for Sub-Saharan Africa's terrorism has been amplified, as history jugs our memory to 2009, when the erstwhile spiritual leader of the sect, Mohammed Yusuf, was unjustly killed by the Nigerian police. Unknowingly to them, the rock-hard foundation of terrorism was laid, which culminated to brutality and wanton killings. Shekau assumed the mantle of leadership and constantly delivered masterstrokes in and around the Lake Chad basin, drawing the attention of international communities to the world-shattering activities of the terrorist group (Boko Haram).

Again, looking at the circumstances that led to the death of Shekau, it is obvious that it was the result of war over superiority, rather than a mainstream fight with the multi-national forces. As such, this has placed power in the hands of ISWAP, a more connected and coordinated faction that has its tentacles well represented in nearly all the West African sub-region. Again, judging from the ties the group has with the Islamic State of Iraq and Syria (ISIS), it could be said that the stage is set for more terrorist activities in Sub-Saharan African countries.

References

1. Afzal, M. (2020). *From Western education is forbidden to deadliest terrorist group education and Boko Haram in Nigeria*. Brookings.
2. Bamidele, O. (2016). Civilian Joint Task Force (CJTF) — A community security option: A comprehensive and proactive approach to counterterrorism. *Journal for Deradicalization*, 7, 124–144.
3. Bamidele, S. (2020). Sweat is invisible in the rain. Civilian Joint Task Force and counterinsurgency in Borno State, Nigeria. *Security and Defence Quarterly*, 31(4), 1–18. DOI: 10.35467/sdq/130867.
4. BBC News, (2021a, June 7). Abubakar Shekau: Nigeria's Boko Haram leader is dead, say rival militants. Retrieved from <https://www.bbc.com/news/world-africa-57378493>.
5. Botha, A., & Abdile, M. (2019). Reality versus perception: Toward understanding Boko Haram in Nigeria. *Studies in Conflict & Terrorism*, 42(5), 493–519.
6. Campbell, J. (2014). *Boko Haram: Origins, challenges, and responses*. Norwegian Peace Building Resource Center.
7. Chabal, P. (2005). Violence, power and rationality: A political analysis of conflict in contemporary Africa. In P. Chabal, U. Engel, and A. Gentili (Eds.), *Is violence inevitable in theories of conflict and approaches to conflict prevention?* (pp. 1–8). Brill.
8. Cold-Ravnkilde, S., & Plambech, S. (2015). *From local grievances to violent insurgency*. Danish Institute for International Studies.
9. Doukham, D. (2020). *Multinational Joint Task Force (MNJTF) against Boko Haram – Reflections*. International Institute for Counterterrorism.
10. Hassan I. (2014). Counterinsurgency from below: The need for local grassroots defenders in curbing the insurgency in North-East Nigeria. *West African Insight*, 4(2), 25–28.
11. Human Right Watch. (2021, April 5). Cameroon: Boko Haram attacks escalate in far North. *ReliefWeb*. Retrieved from <https://reliefweb.int/report/cameroon/cameroon-boko-haram-attacks-escalate-far-north>.
12. International Crisis Group. (2020). What role for the Multinational Joint Task Force in fighting Boko Haram? *Africa Report 291*. International Crisis Group.
13. Isa, M. K. (2010). Militant islamist groups in Northern Nigeria. In W. Okumu & A. Ikelegbe (Eds.), *Militias, rebels, and Islamist militants: Human security and state crises in Africa* (pp. 313–340). Institute of Security Studies.
14. Maza, K. D., Koldas, U., & Aksit, S. (2020). Challenges of combating terrorist financing in the Lake Chad Region: A Case of Boko Haram. *SAGE*, 10(2), 1–17.
15. Onuoha, F. C. (2014). Boko Haram and the evolving Salafi Jihadist threat in Nigeria. In M.-A. P. de Montclos (Ed.), *Boko Haram: Islamism, politics, security, and the state in Nigeria* (pp. 159–191). Ipskamp Drukkers.
16. Oyewole, S. (2015). Boko Haram: Insurgency and the war against terrorism in the Lake Chad region. *Strategic Analysis*, 39(4), 428–432.

17. The Guardian. (2021, June 17). Boko Haram finally confirms Shekau's death, urges loyalty. Retrieved from <https://guardian.ng/news/boko-haram-finally-confirms-shekaus-death-urges-loyalty/>.
18. Thurston, A. (2010). *The disease is unbelief: Boko Haram's religious and political world view*. Brookings.
19. TVC News Nigeria. (2021, August 31). Nigeria: Residents and soldiers flee as ISWAP seizes control of Rann in Borno. YouTube. Retrieved from <https://www.youtube.com/watch?v=ABgYcGvc7Ds>.
20. UNOCHA. (2020). *Cameroun: Extreme-Nord Rapport de situation*, No. 5. The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA).
21. United States Institute of Peace (USIP) (2018). *Civilian-led governance and security in Nigeria after Boko Haram* (Special Report, 438). USIP.
22. Walker, A. (2016). *Eat the heart of the Infidel: The harrowing of Nigeria and the rise of Boko Haram*. Hurst Publishers.

Yemen: Roles and Impact of Local, Regional and International Actors

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Abstract: The Yemeni conflict is complicated due to the numerous internal crises and disputes in the country. In addition, the external correlations and their linkages to the internal actors have increased the intensity of the conflict. There is a need to identify these internal and external actors and analyze their role, impact, strengths, and weaknesses. This study identifies the internal and external actors of the conflict in Yemen, then examines their roles and impact and shows that the conflict resulted from internal conflicts between local actors and took on different dimensions through regional and international interventions. The political, ideological, and self-interest differences are the causes of the disunity among the elites and the political and military forces, and in turn, they led to the exacerbation of the conflict and the negative role in peacemaking.

Keywords: Houthi; Legitimacy; Southern Movement; Tribal; Yemen Conflict.

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Introduction

For decades, Yemen has been inflicted with numerous crises and conflicts sparked by various factors. Some of these upheavals were the result of regional, ethnic, ideological, and political divisions and disparities between the North Yemen and the South Yemen. Despite the unification of the two regions in 1990, the country continued to exist in a state of turmoil politically, economically, and socially. The state of political instability in Yemen is attributed to the

sporadic calls for secession by southern separatists and to institutional fragility in general. In a similar condition, the Yemeni economy is afflicted by economic depression, unemployment, unfair wealth distribution, and, above all corruption and nepotism. In addition, the social structure of the country is ravaged by the unrestricted arms proliferation and dominated by the outdated tribal ideology which has impeded cultural development. As a result of these deteriorating life conditions of the Yemeni citizen, public dissatisfaction has developed, aggravating the situation and leading to the youth revolution in 2011 against the ruling regime.

The significant geopolitical location of Yemen compounded with the factors stated above made it the most vulnerable and fragile country in the Arabian Peninsula. Recurrent interventions by external powers, through their local allies, to achieve their goals and greed for wealth and control created a fragmented Yemeni society with several factions and cantons fighting for different interests. This multifaceted conflict has hindered any attempt to form an effective national government. This is a threat not just to Yemen's stability and security but also to the security of the region and beyond.

In late 2014, the country plunged into civil war. An alliance was formed between the Houthis and the former president Ali Abdullah Saleh leading to a counterrevolution against the internationally recognized government led by Abd Rabbu Mansour Hadi. This anti-Hadi coalition resulted in armed clashes and the seizing of the capital city, Sana'a. President Hadi was placed under house arrest which he managed to escape to Aden with the assistance of his loyalists. As the Houthi-Saleh coup took hold over the northern governorates of the country, President Hadi sent calls for regional aid and intervention. In March 2015, a coalition of ten Arab countries, led by Saudi Arabia, launched an air campaign against the Iran-backed Houthis to roll back their expansion and restore the legitimacy of Hadi's government which was internationally recognized by the United States, the United Kingdom and France.

According to Saudi Arabia and Hadi's government, the Houthis are Iranian proxies in Yemen and they depict the conflict as a fateful battle to stop Iranian expansion in the region (Juneau, 2010). Furthermore, the use of the term "proxy war" to characterize the conflict can reflect the growing influence of external actors on the ground (Clausen, 2015; Durac, 2019); therefore, the Yemeni conflict is not a single war but a mosaic of interlinked, complex and multi-layered conflict. Besides, it has been portrayed as either a civil war between the Houthi group and the legitimate government or a regional war between Saudi Arabia and Iran (Al-Kahwati, 2019). According to Phillips (2011), the conflict results from the Saudi regional rivalry with Iran. Moreover, there are other international, regional, and local actors in the conflict, such as the US and United Arab Emirates (UAE) which escalated the conflict further.

However, focusing solely on the regional influences on the war of Yemen diverts us from the internal causes of the war and the domestic actors directly involved in the

conflict. In addition, it is the complex relationship between all the participants in this quagmire that led to the current catastrophic situation (Brandt, 2017). It is crucial then to understand the complexity of all the linkages and relationships that tie all the domestic players in the Yemeni scenario and examine their influence whether positive or negative. This analysis is consolidated by measuring the impact of the intervention of the external actors and their role in exploiting internal differences and supporting various internal allies in igniting the conflict.

The aim of this article is to highlight the major events that were the fire starter of the multifaceted war in Yemen. It also critically identifies the internal actors responsible for the outbreak as well as it highlights the regional and international as external actors whose intervention caused a noticeable escalation in the conflict. Moreover, it provides a close study of the web of connections and the different types of support the external actors provided their loyalists in the Yemeni inside just to achieve their geopolitical ambitions. The major contribution of this article is: highlighting the involvement of actors in the Yemen conflict, analysing the role of the main actors based on their strengths, weaknesses, differences, and similarities, and classifying both internal and external conflict actors based on their role and impact.

Internally, the civil war erupted between two archrivals: The internationally-recognized government led by President Abdo Rabbu Mansour Hadi and his loyalists and the Houthis, formally known as Ansar Allah movement, backed by the loyalists of the former President Ali Abdullah Saleh.

The Legitimacy of the Government

Legitimacy is a complex notion with legal, political, and social dimensions (Scott, 2011). In other words, the term legitimacy refers to the legal and constitutional form represented by a specific authority of governance and conduct of state affairs, which has been elected and appointed in conformity with the law and constitution. To analyze the concept of legitimacy in Yemen, it is necessary to understand and grasp the local and historical framework. Yemen is a republican state with representative governance, where the Yemeni people are the source of legitimacy expressed through direct elections. In accordance with Article four of the Constitution (1991), "the people of Yemen are the holder and source of authority that they practice directly through public plebiscites and elections or indirectly through the authorities of the legislature, executive, judiciary, and through elected local councils" (The Constitution of the Republic of Yemen, Article 4, 1991).

After years of erosion of popular support or "legitimacy" for the regime of Ali Abdullah Saleh, protesting rallies were held by the opposition parties in 2011. Since January 2011, state security and military organizations have used violence against protestors.

As a result, there was an internal division within the regime (Brownlee *et al.*, 2013). As the state lost control of security and its ability to provide services, Saleh came under increasing pressure from Western diplomats to resign (Salisbury, 2011). By the end of 2011, Saleh's political legitimacy was in a grave existential crisis, or better to say collapsed. The rampant violent reaction Saleh's regime directed against the protesters throughout 2011 had raised public outcry and further weakened his international legitimacy. Consequently, the President was ousted by the end of the year, after he was compelled to resign and to hand over power to his deputy, Hadi, in accordance with the Gulf Cooperation Council (GCC) initiative, endorsed by the UN (Mancini & Vericat, 2016). As a result, an escalating conflict was subdued, but it was later triggered during the next two years of the transitional period (Salisbury, 2018).

It is worth stating that Hadi was elected following a rare set of circumstances, including political consensus, constitutional rules, and a popular vote. Therefore, Hadi continues to be the internationally-recognized president of Yemen and represents its legitimacy (Alshuwaiter, 2020). Hadi's government, which was subsequently elected by the Yemeni people on 21 February 2012, has been seen as legitimate and is recognized globally and was confirmed when the UN Security Council adopted Resolution (2216) that described Hadi as Yemen's 'legitimate president,' underlining international support for him (United Nations Security Council, 2015). The process of legitimizing Yemen's leader has been aided by international recognition and support (Mansour & Salisbury, 2019).

The conflict reached its climax after the Houthis stormed the capital on 21 September 2014. Stability was initially restored in Sana'a following the Peace and Partnership Agreement (PNPA), and the Houthis were incorporated into the security establishment (Al-Moshki, 2014). However, the political disputes between Hadi and his cabinet, including Prime Minister Khaled Bahah, have destabilized the political and security atmosphere. The situation worsened with the submission of a draft constitution for the transition to a federal system, as the Houthis stormed the presidential palace with the help of Saleh and placed Hadi under house arrest. In addition, the Houthis took other measures that would enforce their control over their territorial gains. On 21 February, Hadi managed to escape from house arrest to Aden, where he declared the decisions made since September to be invalid (UNSC, 2015).

On 24 March, Hadi's government sent a consent for a military intervention from the GCC to confront the Houthi-Saleh rebellion, retrieve the overtaken cities, and restore order. Hadi fled to Saudi Arabia when the Houthi-Saleh forces entered the suburbs of Aden the following day. Shortly after that, to combat the Houthis and restore Hadi to power, the Saudi-led coalition, which included the UAE, Bahrain, Kuwait, Qatar, Egypt, Sudan, Jordan, and Morocco, declared the launch of Operation Decisive Storm (Abdallah & Aboudi, 2015). On the other hand, disputes and disagreements emerged on various levels among and between the allies: Hadi's government and its regional partners and-

mong the coalition members themselves. This in return has weakened the performance of the government and its partners, thus undermining its legitimacy (Al-Kahwati, 2019).

In the context of the chaotic state of the Yemeni inside, the internationally recognized Yemeni government has hardly retained any influence and has gradually lost the substantial political back up it once had. Its authority has dwindled due to internal divisions, reduction in public representation and the failure to build a strong governance system in its territories, "with the exception of Marib, Al-Mahra, and Hadramawt governorates" (Ahmed & al-Rawhani, 2018). The legitimate government led by Hadi represents the highest authority in the country, in addition to the support of the international community, but it lacked wisdom to rule effectively and has been unable to enforce order in the so-called liberated areas due to internal divisions.

The Houthi Group

In the aftermath of the opening that followed North-South unification in 1990, political activity was sought by the Houthis group through the founding of the Party of Truth "Hizb al-Haq", while its leader Hussein al-Houthi concentrated on social activities across and ensured "the Young Believer" at the grassroots level (Brandt, 2013). Hussein al-Houthi was killed in 2004 when combat ensued between his supporters and government forces. This intensified the conflict further and was followed by five more rounds of war between 2004 and 2010 (Salmoni, 2010).

The political participation of the Houthis predates the 2011 revolt, which, however, gave them a chance to join the national scene. By early 2011, the Houthis, along with other Yemeni opposition groups were actively participating in uprisings calls for reform, as a shade of the Arab Spring that dominated the atmosphere in the Middle East during that time. They endorsed the protests' main theme: the expulsion of President Saleh and his dynasty from power. Moreover, the demonstrations also provided an opportunity for them to grow their political profile in the capital and create networks (Alwazir, 2017). In March 2011, they clashed with the government forces in Sa'ada, which enabled them to take over the whole governorate (Arimatsu & Choudhury, 2014). Since then, the Houthis have been the controlling authority in Saada governorate, controlling the most important government institutions, collecting taxes, and supervising local government administration (ICG, 2014).

The political wing of the Houthis has started to enter mainstream politics at the start of the transition phase, where delegates were sent to the National Dialogue Conference by the Houthis (Schmitz, 2014), there were increasing clashes, as the Houthi group boosted their control over the bulk of Saada district and crept closer to Sana'a. The Houthis took over some state institutions after taking charge of the capital city, Sana'a, in late 2014 and established new ones (ICG, 2014). They formed the "Supreme Revolutionary Council" and colluded with Saleh and his GPC, who, from his part, desired to reclaim his

sovereignty. As a result, an open confrontation and cycles of armed clashes took place between the Houthi-Saleh alliance and Hadi's globally recognized government. However, the Houthi-Saleh coalition didn't last for long; it was rife with mistrust and it eventually fell apart with the assassination of Saleh by the Houthis on the 4th of December 2017. After Saleh's death, his followers were exposed to different types of Houthi harassment and oppression such as deposing, detaining and in some cases murdering. As a result, the Houthis have consolidated their grip on northern Yemen (Salisbury, 2017).

The Houthi group used a nationalist pretext, whereby they claim that they are fighting an external aggression represented by Saudi Arabia, the US and Israel, and that they maintain national sovereignty (Brandt, 2017). The Houthis may be competent fighters, but they lack governing expertise and appear to only know how to rule through intimidation, threat and brutality in the shape of a rudimentary police state (Al-Kahwati, 2019). For instance, in December 2017, when Saleh tried to reconcile with Saudi Arabia, the Houthis did not hesitate to kill him. Thus, they were able to increase their freedom of action and take more territory after his death, but, at the same time, they have added another foe to their list, Saleh's supporters (Akin, 2019).

According to Heywood (2015), when coercion is a regime's primary mode of governance, popular support and public acceptance of the ruling regime are eroded. This is evident in the Houthis' domination over the capital city, justifying their invasion as to put an end to President Hadi's political manoeuvring and his government's corruption. However, after they gained a strong grip on power and eliminated their ally Saleh, the use of suppression became the basis of their influence, including arbitrary arrest, enforced disappearance, torture, and looting private property. As a result, they are no longer accepted, as they were at the beginning of their campaign, and they have no political actor to support their authority over the areas they control.

Local Sub-Actors

This section focuses on how the multi-faceted interaction between the internal and external actors has deepened the divisions in the already fragmented country. It provides an in-depth analysis of the impact of the internal actors' and the external actors' influence on the two archenemies fighting the war. This part of the article also discusses how external powers such as Saudi Arabia, Iran, and UAE have fuelled the war through their local loyalists. The political manoeuvre of these players along with the existing disputes and divisions in Yemen have directed the course of the war to an irreversible state of anarchy to an extent not seen before. Due to such state of chaos, the future of this war is unforeseeable from the point of view of the Yemeni Elites. Some believe it is a short-term crisis; others see it a long-term war (ICG, 2015).

Saleh and his Supporters

Ali Abdullah Saleh, as the legitimate president of the country for over three decades, had three key levers to maintain his grip on power, which are tribal, political and military. His Sanhan tribe is the core of the tribal element, while the political part is focused on the General People's Congress (GPC). For the continued influence of Saleh, the military aspect is more significant because he had the personal loyalties of many of the high-ranking officers whom he had picked during his term of office (Arraf, 2017). His networks were maintained across branches of the military and the GPC even though he officially handed over authority in November 2011. Moreover, several military units stayed sincere to Saleh despite Hadi's process of the military sector reformation during the transitional phase (Kendall, 2017).

In a mutual interest-based alliance with the Houthis, Saleh initially hindered the performance of the transitional government. The coalition with Saleh gave the Houthis a hard grip over roughly 60 percent of the forces of Yemen and 68 percent of the military arsenal and being combat-trained personnel (Kendall, 2017). At the end of December 2017, this coalition broke down definitively, where initially Saleh's political structures were purged from Sana'a and northern Yemen by the Houthis. Following that, Saleh was assassinated by Houthis (Nevola & Shiban, 2020), and several of his main associates and members of his family were arrested.

The nephew of Saleh and former head of the Presidential Guards Tareq Mohamed Saleh regrouped his uncle's networks in Aden and transferred his attention to the battle for Hodeida, reactivating and building on Abu Dhabi's historical links. He, subsequently, gained significant military, financial, and logistical support from the Emiratis. This marked a return to form for the Saleh networks, which had traditionally opposed the Houthis and retained strong ties with the Gulf. Tareq and other leaders of the Saleh network spent considerable time in UAE-backed military bases and repeatedly travel to Abu Dhabi (Baron, 2019). Paradoxically, the GPC headed by Saleh, which coerced him in 2011 to resign from power, is the Houthis key supporter locally. Saleh fought against the Houthis when he was the president but stood by their side to reclaim power (UNSC, 2015).

The Southern Transitional Council(STC)

A variety of groups within the Southern Movement are represented by the Southern Transitional Council (STC). The Southern Movement emerged from the fallout of the unification of Yemen and consists of People's Democratic Republic of Yemen (PDRY) army holdovers. In 2007, pensioners initiated a series of demonstrations and an unorganized coalition of political factions seeking to bring back sovereignty to the South and regain independence, thus the Southern Movement was formed. However, partly because it lacks a cohesive leadership, the movement has failed to convert public

appeal into political gains (Baron, 2019). The movement was followed in the subsequent years by other social movements and their demonstrations have taken place in different provinces of the South. Their key grievances were economic marginalization, illegal acquisition of southern wealth, moving most bureaucracies to Sana'a, and depriving the citizens of the south of government job opportunities and the advantages of patronage (Phillips, 2017).

Since the Houthis were expelled from Aden, the governorate has been unstable. In mid-April 2017, attacks and armed clashes took place between militias affiliated with Aidarous Al-Zubaidi, then the governor of Aden, and the military forces of the Hadi government at Aden airport. As a result, on 27 April 2017, Hadi reacted by deposing both Al-Zubaydi and the former Minister of State of Yemen Hani Ali bin Burayk. Nevertheless, this served as the impetus for the establishment of the STC consisting of 26 members which was announced in Aden on 11th May 2017. Their primary objective is improving southern governance and working in direct defiance of Hadi for a complete autonomy for the southern region (Salisbury, 2017). This event is considered the most significant divergence in wartime within the legitimacy structure that opposes the Houthi militant group (Forster, 2017).

Late in January 2018, an armed battle broke out in Aden between President Hadi's forces and those aligned to the STC, both are on the same side of the Yemeni conflict opposing the Houthis. More than 40 persons were killed, and dozens of others were injured. However, the UAE, a member in the multi-national Saudi-led coalition, has dedicatedly contributed to the military and political enforcement of the southern resistance to Hadi's ruling in various ways, revealing a split in the coalition that is backing Hadi's authority (Dahlgren, 2018). This illustrates how various actors strive to outmanoeuvre competitors when putting themselves as the most politically important elite (Forster, 2017).

Slightly more than two years later, the STC laid hold of power in Aden by instigating riot and sporadic street fights against President Hadi's forces in August 2019. This, in return, created a new breach in the body of the legitimate government, adding a new doubt on the legitimacy and efficiency of Hadi's cabinet to confront their main enemy, the Houthis and fulfil peace prospects. After days of fighting, on 20 August, Saudi Arabia mediated between the two sides for a ceasefire and the Riyadh Agreement was produced through peace talks in Jeddah and then continued in Riyadh until 5 November 2019 (Forster, 2019). The peace deal was signed by both parties, which is a power-sharing agreement of the Hadi government with the break-away STC, 12 weeks after its takeover of the interim capital, Aden, in August 2019.

The state's incapacity to provide basic services in southern Yemen and the historical legacy of the southern issue and allegations of injustice have fuelled aspirations for southern secession. This has helped to give popular momentum to a growing independence movement in south Yemen. The STC has attempted to take up the banner of

southern independence from its inception. With the help of the UAE at first, the STC grew swiftly and began attempting to exercise state powers alongside the Hadi government. These endeavours have mostly failed, and STC actions are frequently viewed as hampering local government functions. However, thanks to UAE sponsorship, the STC's military authority in many locations, especially the Aden governorate, exceeded that of the government, with STC-affiliated forces acting independently and frequently in opposition to Yemeni armed forces (Ahmed & al-Rawhani, 2018).

Political Parties

The conflict in Yemen has another dimension, where political parties play a prominent role in the conflict. The General People's Congress (GPC) and Islah have always been the most influential parties in the country. The role of the GPC Party was referred to above, as it represented the political hand of former President Ali Saleh; the Islah party and its role in the Yemen conflict is discussed below. *Islah Party* was formed shortly after unity in 1990 and is commonly referred to as Al-Islah. This occurred a few months after the unification of both parts of the country, accompanied by the introduction of the democratic structure of unified Yemen with multi-party arrangement. What distinguishes al-Islah is that its members belong to prestigious dynasties of the country in addition to a web of regional connections with some Gulf countries such as the Saudi Arabia (Bonnefoy, 2010).

In general, Islah is one of the main local political powers in Yemen. In the post-unification era, both in the run-up to and after the 1994 civil war, Islah was allied with the ruling GPC party, partly as a reserve against the Yemeni Socialist Party (Lackner, 2017). The dispute between Islah and Saleh began after the presidential elections in 2006, when opposition parties, including Islah, presented a candidate against Saleh. The dispute became intense when the Arab Spring revolution erupted in Yemen. This new political development led the Islah to change its policy by supporting the popular revolution and those who demanded that the government led by Saleh must step down (Al-Tamimi & Venkatesha, 2020). In the post-Saleh period, the rift among the political parties deepened and their struggle to remain in power soared, and their strife to retain regional support have persisted until today.

Despite the fact that the Islah party is one of the significant players in the current Yemeni scenario, the UAE has deliberately worked to weaken its stand and brutally interrupted its path for a crucial post-war political role, claiming that they are linked to the Muslim Brotherhood. This has led to friction and tension with Saudi Arabia, which is a strong pro-Islah relation (Juneau, 2020). Through several statements Islah party has declared its rejection to any organizational or political links to the Muslim Brotherhood and that its priorities and rules as a political party are purely national (Al-Masdar Online, 2016). Some analysts have suggested it is the relationship between the Yemeni Islamic

movement and the Muslim Brotherhood is one of voluntary coordination and cooperation. In Yemen, the Islamic movement came into the country in consonance with its geography, and there was no pull back or renouncing of its national affiliation and is a consequence of its community, including its culture, identity, customs, and civilization (Mussed, 2020).

In addition, many other political parties declared their support for the legitimate government headed by Hadi against the Houthis. However, they did not have a prominent role either on the ground or at the political level. Moreover, an internal division occurred as some parties were divided between supporters of legitimacy and supporters of Houthi. The most prominent of these parties are the Socialist Party, the Nasserist Party, the Rashad Party (Salafis), and the Justice and Construction Party.

The Tribal and Military Elite

One of the actors shaping the Yemeni reality was the tribal and military elites, as the Saleh regime was based on the patronage system. In comparison to the elites, common protestors demanded fundamental reforms in 2011. They were firm on one goal that this corrupt regime should be eliminated and a civilian state headed by civilians must take over. It should ideally involve no military or tribal elite and be in compliance with democratic practices. With the rising number of demonstrators and the failure to address the political crisis, street violence intensified further. The “Friday of Dignity” was one of the bloodiest days of the 2011 uprising. On 18 March 2011, over 50 demonstrators were shot dead in Sana’a at Change Square. As a result, many regime loyalists, the General People’s Congress and the security establishment broke off Saleh’s grip (Al-Shargabi, 2013).

Foremost notable defections were General Ali Mohsen, President Saleh’s closest and long-standing ally and his right-hand man in the armed forces and Sadeq Al-Ahmar, the Hashid tribal federation’s supreme sheikh. Because Ali Mohsen belongs to the Sanhan tribe, President Saleh’s tribe, these defections had tribal and military dimensions. The Hashid tribal federation is led by the Al-Ahmar family, including Sanhan. Therefore, this breakaway produced an irreparable rift inside the military and among Hashid tribes in general, particularly the Sanhan tribe (Soudias & Transfeld, 2014).

This was the reason for achieving the demonstrators’ demands for a change in Saleh’s regime. However, some of the elites remained loyal to former President Saleh, which subsequently fueled the situation and led to the current state of the war. At the beginning of the current conflict, the Houthis entered and took control of the capital with the help of some tribal and military personnel under Saleh’s command.

Tribal traditions have long played an important role, both local and regional. Rather than working with or in opposition to the Yemeni state, tribals penetrate it on several

levels. This is what led to the consideration of the elites of the tribal and military groups as influential actors.

Regional Sub-Actors

Maintaining a balance of power in an area governed by political and religious dominance in the region is the paradox of the relationship between Iran and Saudi Arabia. The rivalry emerges primarily from the power struggle between the two competing states, raising influence and security dilemma. However, after the wave of the Arab Spring, the changing dynamics of the Middle East altered the essence of threats tremendously and encouraged non-state actors in state structures. Moreover, the conflict is indirect, involving proxies and the propagation of ideology (Shujahi & Shafiq, 2018).

Thus, the Yemeni scenario can be interpreted, in a broader sense, as part of Saudi Arabia and Iran's greater power struggle. As its strongest rival in the region, Saudi Arabia has accused Iran of arming the Houthis to produce a copy of Hezbollah near its southern border (Al-Kahwati, 2019). On the other hand, Saudi Arabia has consistently backed the legitimate Hadi government and some political parties in the country (Ali, 2015). This section provides a critical overview of the regional actors involved in the current Yemeni conflict, highlighting their influence on the course of the war whether positively or negatively.

Kingdom of Saudi Arabia (KSA)

Saudi Arabia has the longest borderline to Yemen. A range of variables has influenced Saudi Arabia's foreign policy towards Yemen, including the steady flow of Yemeni immigrants to Saudi Arabia, issues with security and economic, and tribal relations (Hill & Nonneman, 2011). In Yemen, Saudi leaders have preserved vast patronage networks, where the Saudi rulers' relations with former Yemeni President Saleh have had ups and downs, as the Saudis worked against and with him, aligning with altering national and external dynamics (Rugh, 2015).

Moreover, the Saudi ruling elites have pursued Yemen's political stability and territorial integrity, which they claim will be potential only via a powerful centric government. Therefore, Saudi Arabia is working to support the legitimate government headed by Hadi and, through its direct military intervention in Yemen, aims to restore Hadi to power (Rugh, 2015).

According to Saudi Arabia's national strategic interests, there are four fundamental causes for its readiness to stabilize Yemen under the administration of Hadi's regime: "Secure its border with Yemen, curbing the regional plans of Iran for expansionism, battle against terrorist attacks and maintaining security in the area" (Saudi Ministry of Foreign Affairs, 2017).

The Impact on the Ground: Not surprisingly, given their common borders, Saudi Arabia plays an outsized role in the internal affairs of its neighbor, Yemen. In the aftermath of the Arab Spring, Saudi Arabia assumed the lead in managing Yemen's political transition from Saleh's regime (Al-Tamimi & Venkatesha, 2020). Three years later, in 2015, Saudi Arabia felt obligated to intervene militarily in Yemen to restore President Hadi's government.

Although Saudi Arabia has not yet lost the war in Yemen, it is practically inevitable that it will not succeed. This is reflected in the fragile state of the Hadi government that is characterized by weakness and dispersion on reality. As a matter of fact, the Houthis still dominate significant swaths of the north, virtually functioning as a nation-state, and a destructive air campaign that has lasted six years has done little to shake or even loosen their grip on power and its ties to Iran.

The United Arab Emirates (UAE)

The most powerful foreign player in the South of Yemen is the United Arab Emirates, a member of the coalition led by Saudi Arabia. However, the UAE has shrewdly built a base of loyalists in the South and west coast of Yemen and, in particular, Aden, while the Saudi Arabia has concentrated on the airstrike campaign. They have supported and trained UAE control teams but have provided numerous armed militias with operational and material support. The UAE was criticized for utilizing the existing authority void to gain command of Yemen's vital areas (Jerrett, 2017), especially the ports of Yemen, as they put their hand on one of the busiest world transportation routes, "Bab Al-Mandab". The UAE-Hadi relationship is tense, leading to direct armed encounters between the militias backed by the UAE and the forces loyal to Hadi (Clausen, 2018).

In addition to mobilizing secessionist groups against the Hadi government in the South, the UAE has also formed well trained and equipped local militias such as 'Elite Forces' and 'Security Belts'. Some of those organized groups belong to Salafists who work to target those affiliated with the Islah party and loyal to the Hadi regime, in addition to the Houthis. This approach can be considered one of the long-term strategies for the UAE to protect parts of the Red Sea coastal region, along with a passage to the Horn of Africa, where Eritrea, Ethiopia, and Djibouti have already built military bases.

The Impact on the Ground: The UAE's backing for the Southern Transitional Council (STC) lies at the heart of its strategy. The UAE provides the STC with financial and logistical assistance. It has also mobilized, trained, and equipped 90,000 troops from the southern militias with fairly strong command and control over them. In addition, on Yemen's west coast, The UAE's interests include the Bab al-Mandeb Strait in the southwestern corner of the country and Hudaydah, the country's second port. The UAE's strategy on the west coast has centered on supporting Tareq Saleh and the Giants "Amaliqah"

Brigade, over which UAE command and control is not as strong as it is over southern militias (Juneau, 2020).

Nowadays, some territories of Yemen, particularly in the southern governorate of Aden and Mokha city, have become an Emirates control region through its local proxies, and their influence is growing by the day.

Gulf Cooperation Council (GCC) and Arab Coalition

In the regional context, the Gulf countries have continuously interfered in Yemen's internal politics, both in the pre or post conflict periods. The military operation in which the Gulf countries, except Oman, participated against the Houthi group is an intervention with a declared aim to support and reinstall the legitimate government represented by President Hadi. Regardless of any other undeclared goals, the beginning of this intervention represents a historic opportunity for the Gulf states to bring to a halt the influence that Iran is seeking to achieve in the region (Ali, 2015).

So far, the GCC, consists of Saudi Arabia, Oman, the United Arab Emirates, Kuwait, Bahrain and Qatar, has pledged to facilitate the delivery of humanitarian aid to Yemen. Most Council members, except Oman, are also participating in the Saudi-led coalition against the Houthis. However, in 2017 Qatar withdrew from the alliance after falling into a diplomatic crisis with other Gulf countries. To oversee the transition to political stability and implement the weapons embargo on rebels in Yemen, the UN has agreed to collaborate with the GCC to the degree that it supports Saudi interference in Yemen.

The Saudi-led coalition, which was launched with the proclaimed objective of combating the Houthi rebels and reestablishing the authority of the legitimate government, has been the key external actor in the Yemeni war scenario since March 2015 (Saudi Ministry of Foreign Affairs, 2017). Originally, it consisted of Arab countries (Saudi Arabia, United Arab Emirates, Bahrain, Kuwait, Qatar, Egypt, Jordan, Sudan, and Morocco); nevertheless, after the Qatari diplomatic crisis, the latter was cast out from the coalition in June 2017.

The USA, the UK, and France contributed indirectly by providing logistic assistance and information to the coalition. Saudi Arabia and the UAE are the spearheads of the coalition's military operations, and each one of them pursues its own interests in Yemen. The airstrike operations of the coalition are operationally managed by a mutual command headed by Saudi Arabia and located in Riyadh. In addition, Saudi Arabia maintains operational control of ground operations in Marib, while the United Arab Emirates retains operational control over ground operations in Aden and the western coast (Arraf, 2017).

Iran

It is clear that Yemen was not on the list of foreign policy goals of the Islamic Republic until recently, and there are no proofs that Iran offered any cooperation to the Houthis.

before the start of the 2004 war. However, since the moment of the first war between the Houthis and the Saleh regime, the Houthis and Iran had more continuing connections, and Tehran began to supply them with military, financial and political support (Terrill, 2014).

In 2009, Iran began exporting low quantities of arms to the Houthis, according to a report in April 2015 to the Committee on Iranian Sanctions of the UN Security Council. The weapons transferred by sea were established, and seven potential occasions of such shipments were detailed. In one of those instances, in April 2009, a ship belonging to Iran transported arms boxes to Yemeni vessels in international waters; in the other one, a fishery ship affiliated with Iran that was confiscated by Yemeni powers in February 2011, was found to hold 900 Iranian anti-tank and helicopter missiles (Landry, 2015).

Iran's patronage of the Houthis seems to have grown beyond 2011. US officials who had previously denied the Yemeni allegations of Iranian funding for the Houthis have begun to admit that Iran is likely to offer very limited aid, including low quantities of automated weapons and grenade launchers, bombing equipment and cash in the amount of several million dollars (Schmitt & Worth, 2012). According to Conflict Armament Research (CAR), in contrast to the Houthi rebels' claims that they designed and built UAVs, they deployed Iranian-made missiles and drones like the Qasef-1 type UAV (CAR, 2017). According to a July 2018 report by a UN panel of experts, despite the UN arms embargo placed on Yemen since 2015, Iran colluded in providing Yemen's Houthi rebels with ballistic missiles and drones that "display features similar" to Iranian-made weapons (UNSC, 2018).

According to Western officials, Iran has increased military and financial assistance to the Houthis from the beginning of Operation Decisive Storm. Particularly since the collapse of the Houthi-Saleh alliance. They said that many Iranian advisors were on the ground in Yemen, along with hundreds more from Lebanon's Hezbollah (Baron, 2019).

The Impact on the Ground: After the Arab Spring uprisings, Iran's presence has increased regional political tension. It would be fair to say that the Middle East's post-revolutionary developments have expanded Iran's room for regional maneuvering. As Broder rightly points out, contemporary politics in the region reflects Tehran's weight. Its presence extends over a strategic region from Lebanon to Syria and Iraq, and then Yemen. The religious rhetoric of Shi'a plays a significant mobilizing function behind this influence (Broder, 2017). To extend its presence in the region, Iran has established its relationships with governmental and non-governmental actors. Governmental actors, including Syria and Iraq. As for non-governmental actors, Hezbollah in Lebanon, Bahrain, and Yemen to enhance its presence in the region (Zweiri, 2016).

The chain of events that started with the Houthis takeover of Sana'a in September 2014 has led Iran to a greater lifting of its funding. Since mid-2014, there have been various

media reports citing the US and Western officials acknowledging a higher degree of support from Iran to the Houthis. According to these reports, there could be dozens or hundreds of Iranian Revolutionary Guard Corps (IRGC) advisors in Yemen (Strobel & Hosenball, 2015). In addition, it is alleged that Houthi fighters have traveled to Iran and Lebanon for training, as Hezbollah has played a major role in grooming the Houthis' military capabilities (Strobel & Hosenball, 2015).

Iran also started to be more transparent about its position in Yemen around this time. For example, President Rouhani characterized the Houthi seizure of Yemen's capital in 2014 as a "splendid and thunderous victory", a statement that would have been unlikely to be made by an Iranian official in the past. Then the Iranian Deputy Foreign Minister officially promised political assistance to the Houthis in February 2015 (Bayoumy & Ghobari, 2014). Shortly after that, a deputation of Houthis returning from Teheran in March declared the approval of Iran to supply Yemen with a package of economic support, including assistance for the expansion of Yemeni harbors and the development of power generation stations, and a one-year supply of oil. In March 2015, the establishment of two daily flights between Tehran and Sana'a was also declared by Iran and the Houthis (Juneau, 2016). It is also important to state here that Iran is the only country that officially approved the legitimacy of the Houthi coup, despite its official denial of supporting them, by reopening the embassy and assigning an ambassador in Sana'a. This contradictory stand reveals the depth of the relationship between Iran and the Houthi allies.

International Sub-Actors

Besides the main domestic belligerents, minor actors, and regional actors, the Yemeni conflict drama also involved international actors, especially when the conflict expanded and became internationalized in 2015. The role of a number of countries such as the United Kingdom, France, Russia, and above all the United States in the Yemeni war whether directly or indirectly is discussed critically below.

The United States

Prior to 2015, the US primary role in Yemen was fighting against al-Qaeda in the Arabian Peninsula, which included mainly Unmanned combat aerial vehicle (UCAV) strikes against terrorist cells and leaders (Arimatsu & Choudhury, 2014). In addition to battling the network of terrorists and extremists, the United States funded the operations of the Saudi Arabia-led coalition in Yemen in 2015. Because of its ties with the government of President Hadi, Washington has expressed its dissatisfaction with the Houthi forces' overthrowing of the globally acknowledged legitimate government. Therefore, the US provided military logistical and intelligence assistance and deployed American warships in the Gulf of Aden and the Red Sea to support the Saudi-led operation against

the Houthis to restore legitimacy and order to Yemen. In addition, it also supplied the fuel for coalition air forces warplanes to conduct the airstrikes in Yemen to preclude Iran from any direct involvement with the dispute (Rugh, 2015).

Overall, Houthi statements and attempts to establish a government have not officially been recognized by the United States and others in the international community, maintaining that President Hadi remains Yemen's legitimate president. The United States has demanded that both parties stick to previous internationally brokered agreements, such as the transition plan for the Gulf Cooperation Council in 2011 and the Peace and National Partnership Agreement in September 2014 (Sharp, 2015).

The risks posed to commercial and military ships by the Houthis in the Red Sea have made the situation more serious and fragile. Consequently, in August 2018, General Votel, the Commander of the US Central Command, reported that: "As far as we're concerned, Bab-el-Mandeb is open for business. And I'd say it's major waterway, not only for the United States, but in terms of going through that specific region for many countries. Therefore, one of our main missions here is to ensure freedom of navigation and trade, and we will strive to do so throughout the country" (Al Dosari & George, 2020).

The Impact on the Ground: There is no doubt that, internationally, the US is one of the most influencing actors in the current mayhem in Yemen. For the past two decades, the US has launched unilateral attacks in Yemen against what it considers to be terrorist targets. Concerning the Yemeni conflict, it has also played a crucial diplomatic role, vigorously lobbying for the execution of the "Gulf Initiative" in 2011, which resulted in Saleh's resignation in exchange for immunity. Even while the US insists it is unbiased and takes no part in the conflict, it has recently backed the Saudi-led coalition's military action in Yemen, giving logistic and intelligence support.

The US wields considerable influence over the Saudi-led coalition and is, therefore, a crucial role in pressuring Saudi Arabia and the United Arab Emirates to reach an agreement to eliminate the regional dimension of the conflict (Johnsen, 2018). This is especially true of Saudi Arabia, with which the United States has had the longest association of any Middle Eastern country, specifically in the oil and arms industries (Riedel, 2018). However, the US has failed to use its diplomatic clout with Saudi Arabia to influence or reverse the war's present course (Johnsen, 2021).

The United Kingdom and France

The two nations have been provisioning the coalition led by Saudi Arabia with arms and military equipment on a wide level. Since the military operation by the coalition started in March 2015, amid reports of repeated violations of International humanitarian law (IHL) by the coalition, more than £ 3.3 billion in weapons and military equipment has been licensed by the UK (Amnesty International, 2017). Last July, the High Court

in London dismissed a legal challenge to the UK government's weapons sales to Saudi Arabia. Besides increasing its weapons and military equipment exports to the coalition of Saudi-led since March 2015, it is reported that France has given training to Saudi air force pilots (Mohamed & Fortin, 2017).

Information was issued by the United Kingdom Foreign Secretary in 2016 as: "In Saudi Arabia, we have a military presence and we work with the Saudis to ensure that proper protocols are followed to prevent violations of international humanitarian law, to ensure that target sets are properly identified, and processes are properly followed and that only valid military targets are achieved. We also use the staff present as a rapid verification of international humanitarian law violations. So far, our people on the ground have confirmed, in every situation, that there is no proof of intentional violations of international humanitarian law" (Lewis & Templar, 2018).

The United Kingdom backed Saudi Arabia's and the United Arab Emirates' policy objectives of eliminating Iranian influence from Yemen. Since the United Kingdom realized that the resolution of conflict and rehabilitation of Yemen would take years, if not decades, they chose to constantly participate via Yemen's neighbors, who stood to gain or lose the most from their successes or failures (Brehony, 2020).

The European Union

The EU is the major Western body with a working relationship with all the main war actors. Before Griffith was appointed as the UN mediator to Yemen, Antonia Calvo Puerta, the leader of the EU Track-2 activities inclusive of many Yemeni tribals, was the only Western diplomat to visit the Houthi leadership. The EU even had the capacity to promote the mediation attempts of Griffith, in addition to collaboration with the tribes. The United Kingdom has previously vetoed Brussels' increased participation on several occasions, the United Kingdom's withdrawal from the EU implies, however, that it now has a revived chance to advocate and mediate for solutions (Al-Muslimi, 2018).

Russia

Until the spring of 2019, Russia had no profound presence in the Yemen war. It took part in the mediation efforts by influencing many Yemeni parties, like the Houthis and the Southern Transitional Council. (STC). This is because of their strategic reasons and their historic links (Ramani, 2018).

The Yemeni issue in the Security Council was marked by the unanimous vote of members on the resolutions issued, except in one case, as Russia was the only country that withdrew from the vote on Resolution 2216 that makes it seem quite neutral in the eyes of the Houthis, which Russia might use to its benefit to compel the Houthis to participate in negotiation processes. This has happened to a certain degree already. Moscow has

engaged with the Houthis more than any other great force since 2014, forcing them to participate in versatile diplomacy.

Discussion and Analysis

The Arab Spring revolution in Yemen ended with the signing of the GCC Initiative and its implementation mechanism. After that, procedures to be followed within a particular phase, called the transitional period, were identified, which included presidential elections and dialogue between the various Yemeni communities, and then the approval of the new constitution and the start of a phase for the new Yemen. However, during the transitional period and the state's preoccupation, the Houthis consolidated their power in the Saada governorate and its environs until they reached the capital, Sana'a, and controlled it along with all the state institutions there. They placed the president and state officials under house arrest. Thus, a *coup d'état* stopped the transitional process and ushered in a new conflict that has been running until this day.

Yemen has not known stability nor peace since the Arab Spring revolution of 2011 until the present time due to the continuing conflict, political upheavals and deeply rooted disparities between the parties. During this period, the country has witnessed a group of influential forces, whether political or ideological, with shifting positions and degrees of power, as shown in Table 1.

The analysis of the conflict in Yemen indicates the occurrence of divisions that led to the failure of the transitional political process agreed upon in accordance with the Gulf initiative and the NDC. These divisions were initially represented by the Houthi invasion of the capital and control of state institutions, and the restriction of the legitimate government from carrying out its work. Thus, the failure of the transitional phase led to the invocation of external intervention. This was followed by a split led by some leaders belonging to the Southern Movement after the formation of the STC, which is considered to have enough legitimacy to confront the government. Finally, with the help and support of the UAE, the militias of the Council took control of Aden and expelled the legitimate government from it, thus weakening legitimacy and dispersing the common goal which is supposed to unify them in confronting the Houthi rebels.

The conflict in Yemen is extremely complex, due to the increase in number of actors, which makes it more difficult to reach a solution to alleviate the miseries and grievances of the Yemeni people and ensure a constant peace. Initially, the war started between a legitimate ruling political structure and a militia of rebels. However, those main arch enemies are just two actors among an array of other actors, local, regional and even international. Adding insult to injury, those actors are themselves facing intra-war tensions and clashes, as evidenced by the Houthis' rivalry with the loyalists of the former president Saleh in Sana'a as well as by the Hadi forces' sporadic clashes with the supporters of the STC in Aden.

The more parties involved in a dispute, the longer it will likely last and the more difficult it will be to reach a peace agreement. As Christopher Phillips argues, the more external actors are involved in the Yemeni affairs, the longer the civil war is likely to remain. They are unlikely to halt their involvement until their objectives are realized and goals achieved, and the more agendas in play, the more difficult it is for any resolution to please all parties (Phillips, 2016).

Consequently, the Houthi group turns to be not the only threat to the government, the representative of legitimacy in Yemen. There is the STC, as well, which is a stubborn obstacle since it is sustained by the UAE backing. Although the STC signed the Saudi-brokered Riyadh Agreement in November 2019 to avoid further clashes, there are no indications that the agreement has been executed in reality. The STC most recently announced a state of emergency and self-rule over the South on 26 April, despite Saudi Arabia's rejection of the announcement (Doucet, 2020).

Therefore, given the current state of the Yemen conflict, this study classifies the conflict actors into three main actors: the legitimate government, the Houthi coup, and what can be described as the coup of the Southern Transitional Council. Table 2 shows the strengths that characterize each of these actors compared to the weaknesses of each, clarifying the differences and similarities between them.

The legitimacy of Yemeni state institutions has perpetually been brittle and in crisis, as it has failed to address the state's complex social and political structure. This in turn has been the main trigger of the current conflict and increasing tension. The fragility of the legitimate government has resulted in the appearance of many non-state players contending for power and control of resources in Yemen disregarding the common interest of the Yemeni people, the real stakeholders. Aiding the reestablishment of legitimacy is definitely crucial to the country's reconstruction and long-term peace and stability. But unless all the national powers and political bodies within the regime pay strenuous efforts and show sincere will for reform, Yemen legitimacy will remain a dilapidated structure and accordingly the country will continue in its state of anarchy and political vacuum. Yemen's political and social structure is complicated, and for the government to entertain strong legitimacy, it must encompass the diversity and address the interests of the country's diverse populations rather than the interests of a small group of elites.

Hadi's government is supported by regional actors such as Saudi Arabia and the United Arab Emirates, who consented to be involved in the conflict to restore the "legitimacy" of the Yemeni government in Sana'a. The Saudi-led coalition, and particularly Saudi Arabia, has indeed been propping up the government in the sense that without Riyadh's military, financial, and logistical support, the government would have dissolved years ago. But, on the contrary, the coalition has been undermining the legitimacy of the very Yemeni government it claims to support. Both Riyadh and Abu Dhabi have established direct relations with Yemeni groups that operate beyond the government's jurisdiction,

Table1: The Conflict Actors Timeline Analysis

Year	Conflict Actors	Local Supporters	External Supporters	Description	
2011	Youths Revolution	Joint Meeting Parties, Part of the Yemeni tribe, Houthis movement, Southern Movement	USA, KU, Russia, Qatar	At this stage, external actors were supportive of the Yemeni people for change. The youth revolution ended with the signing of the Gulf Initiative and its implementation mechanism, and thus began the transitional period headed by Hadi.	
	Against: Saleh's regime	General People's Congress, other part of the Yemeni tribe	KSA, UAE,		
	2012–2013 The transition period, which witnessed some kind of calm and preparations for change.				
2014	Houthis Group	Saleh and his followers with Part of GPC, Part of Salafis, Part of the Yemeni tribe	Iran, Russia	Russia's support was demonstrated through its objection to some of the Security Council resolutions.	
		Islah, Part of GPC, Al-Rashad Union, Southern Movement, Part of the Yemeni tribe	KAS, UAE, USA, UK, France		
	Houthis Group	Saleh and his followers with Part of GPC, Part of Salafis, Part of the Yemeni tribe	Iran, Russia		
		Legitimacy Government	Islah, Part of GPC, Al-Rashad Union, Southern Movement, Part of the Yemeni tribe		The Arab Coalition, USA, UK, France
			2015 At the request of President Hadi, formation of the Arab coalition was announced and began operations against the Houthis to force him to return to the political track.		

2017 to current time	Houthi Coup	Saleh, Part of GPC, Part of Salafis, Part of the Yemeni tribe	Iran, Russia	The Southern Transitional Council was formed demanding the Autonomous Administration of the southern governorates, which worked to confuse the legitimate government and began the dispersion in the confrontation of the Houthis and focus on problems within the components of legitimacy. A dispute arose between Saleh and the Houthis, as Saleh announced to his followers to leave the Houthis, which resulted in confrontations between them that ended with the elimination and killing of Saleh.
	Legitimacy Government	Islah, Part of GPC, Al-Rashad Union, Part of the Yemeni tribe, Part of Southern Tribes	The Arab Coalition, USA, UK, France	
	Southern Transitional Council	Part of GPC, Part of Salafis, few of Southern Tribes	UAE, UK, Russia	

Table 2: Comparative analysis of the main local actors in Yemen conflict

Comparisons Aspects	Legitimacy	Houthis	Southern Transitional Council
Strengths	<p>Internationally recognize.</p> <p>They have a wide popularity throughout the country.</p> <p>They have some economic resources, including ports and oil areas.</p> <p>They have major external support by KSA as the main supporter.</p>	<p>They seized state institutions after taking control of the capital.</p> <p>They rely on dynastic, tribal and regional nervousness.</p> <p>Unity of leadership and decision with clarity of goal.</p> <p>They have major external support by Iran.</p> <p>They grip the financial resources of the areas under their control, the most important is the port of Hodeidah.</p>	<p>They almost completely control the temporary capital.</p> <p>They have major external support, from UAE.</p> <p>They grip the financial resources of the areas under their control, the most important is the port of Aden.</p>
Weaknesses	<p>Its leadership and decisions are dispersed because it includes the various portions of society.</p> <p>The government's inability to provide require basic living services to the Yemenis.</p> <p>Development failure.</p> <p>The suspension of oil and gas exports, which led to the economic collapse.</p> <p>They have not succeeded in representing the state that was Yemeni's dream.</p> <p>Ruling the state from outside the country.</p>	<p>Not recognized internationally except Iran recognized them.</p> <p>They do not have a popular base except from some stakeholders.</p> <p>Ruling through threats and violence in the form of a police state.</p> <p>Monopolizing authority and state resources.</p> <p>Lost the influential political ally "Saleh" by killing him.</p> <p>Lack of commitment to pay the salaries and entitlements of Yemenis in their control areas.</p>	<p>Not recognized internationally except within the parts of legitimacy.</p> <p>They do not have a popular base except from some stakeholders.</p> <p>Dependence on external support.</p> <p>Division among the various factions in the southern governorates.</p>
Differences	<p>They urge all parties to resume dialogue and complete the transition process.</p> <p>They have a popular base.</p> <p>Weak control over their areas of rule.</p> <p>They have international recognition.</p> <p>They have unity of leadership but are scattered.</p>	<p>They want to take control of the remaining areas and the restoration of their prior kingdom back.</p> <p>They do not have a popular base.</p> <p>Tight control over their areas of grip.</p> <p>They do not have international recognition.</p> <p>They have unity of command.</p>	<p>They demand secession and the restoration of the southern state to its pre-unification borders.</p> <p>They do not have a popular base.</p> <p>Weak control over their areas of grip.</p> <p>They do not have international recognition.</p> <p>They have unity of leadership but are divided within the national framework.</p>
Similarities	<p>External funding.</p> <p>Control of a specific region of the country.</p> <p>Indifference to answer the aspirations of the Yemeni people and improve their status.</p>		

and they provide support to those groups. According to public criticism, Hadi's coalition allies are accused of using his "legitimacy" as a cover and justification for their military and business activities on the ground (Ahmed & al-Rawhani, 2018).

During the transitional period in 2014, the Houthis turned against the outcomes of the National Dialogue Conference, as they took control of the capital after their alliance with former President Saleh. Since this event, Yemen has witnessed a violent conflict that has led to external interventions. Table 3 provides an analysis of the various types of actors in this conflict and their diverse positions, roles, and impact up to the present time.

Table 3: Analysis of the Conflict Actors Based on their Role and Impact

No.	Actor	Type	Political	Military	Popular	Funding
1	Legitimacy Government	Key Actor	✓	✓	✓	✓
	• Islah	Local Sub-Actor	✓		✓	
	• Part of GPC	Local Sub-Actor	✓		✓	
	• Southern Movement	Local Sub-Actor	✓		✓	
	• Part of the Yemeni tribe	Local Sub-Actor	✓		✓	
	• Part of Salafis	Local Sub-Actor				
	• The KSA	Regional Sub-Actor	✓	✓		✓
	• The UAE	Regional Sub-Actor		✓		✓
	• The USA	Regional Sub-Actor	✓	✓		
	• The UK	International Sub-Actor		✓		
	• France	International Sub-Actor		✓		
2	Houthis	Key Actor	✓	✓	✓	✓
	• Saleh and his followers with Part of GPC	Local Sub-Actor	✓	✓	✓	
	• Part of the Yemeni tribe	Local Sub-Actor	✓		✓	
	• Part of Salafis	Local Sub-Actor				
	• Iran	Regional Sub-Actor	✓	✓		✓
	• Russia	International Sub-Actor	✓			
3	Southern Transitional Council	Key Actor	✓	✓	✓	
	• Part of Salafis	Local Sub-Actor			✓	
	• Southern Tribes	Local Sub-Actor	✓		✓	
	• The UAE	Regional Sub-Actor	✓	✓		✓
	• The UK	International Sub-Actor	✓			
	• Russia	International Sub-Actor	✓			

Studying the many actors participating in Yemen's conflict and their characteristics aids in analyzing their viewpoints and predicting their actions. As can be observed from the above discussion, the conflict's complexity stems from the large number of parties involved in it and the fluid nature of their connections, which is influenced by personal

interests and fueled by other actors. Alliances are formed due to common adversaries working against a third opponent, as evidenced by current alliances. For instance, being against the Houthis does not essentially require to be a pro-Hadi. Likewise, becoming against the external intervention does not necessarily imply being a pro-Houthis. The nature of these connections has resulted in strange and unexpected partnerships between originally opposing factions, such as the case of the Houthi-Saleh brittle alliance, who were permanent enemies.

Moreover, although most factions claim to be opposed to external involvement in the Yemeni inside, most alliances, whether explicitly or implicitly, are backed up by external actor, as revealed by the above analysis. It is important to highlight, however, that these alliances are not straightforward. For example, Yemeni parties accept financial aid, but they are protective of their sovereignty and identity and may oppose foreign parties' advice and commands occasionally. As a result, it is impossible to label Yemen's conflict as a proxy war, given the intricacy of the actors involved, even within a single organization. This is evident in the internal divisions that occur inside groups due to differing beliefs and viewpoints.

Some scholars have supported this point of view, as Maria-Louise Clausen (2015) argued that the Houthis' existence and onslaught are far more credibly regarded as a product of Yemen's political and economic backdrop than a result of Iranian strategy. Moreover, Durac also pointed out that the conflict in Yemen is being described as a proxy war between Iran, which supports the Houthis, and Saudi Arabia, which supports the legitimate government. This narrative, in his point of view, is nothing but a simplification of the idea and a contradiction of history and reality (Durac, 2019). However, it can be said that the external intervention in Yemen especially from the regional actors is a result of the competition for control between Saudi Arabia and Iran over the region (Al-Tamimi & Venkatesha, 2021).

Conclusion

Yemen has entered a dark tunnel, a state of chaos and civil war, since the moment the coup of the Houthi-Saleh alliance put their grip on the state institutions in Sana'a. Then, a vicious war raged between the legitimate government and its supporters and the Houthi-Saleh alliance and their supporters. Moreover, the interference of external actors has exacerbated the intensity of the conflict in Yemen, making these outsiders inevitably dominant players in the Yemeni local affairs. Therefore, it can be said that this dispute has two sides, internal and external. On one side, the Yemen conflict is multi-faceted struggle due to the internal divisions and intra-alliance disagreements of the country's political elites. On the other side, the external players, whether regional or international, have goals and ambitious to achieve in order to secure their borders or simply satisfy their greed for power. Therefore, the prospects for restoring state and security while

also achieving peace are bleak and uncertain except for returning to completing the transitional phase based on the Gulf initiative and its executive mechanisms.

The conflict in Yemen is endless and no winner appears in the horizon. The legitimate government and its supporters are ineffective and divisive, and the Houthis are sufficiently supplied through illegal and twisted networks to fight a long-term war. What is left is a country that is shattered by indiscriminate bombing by the Houthis and ruthless airstrikes by the Saudi-led coalition, suffering from acute shortage of the simplest vital public services such as water, food and electricity.

In conclusion, by excluding the external players whose interference is primarily for their own ambitions of power and domination, the solution to this conflict is purely an internal responsibility that mainly lies on the Yemeni political, military, and tribal elites. The peacemaking process must include all conflicting actors and sectors of the society to address all the causes that led to the conflict and to prevent the reoccurrence of future conflicts. Peacemakers must consider sustainable long-term prosperity in the country and seek the support of the international community for a smooth peacemaking experience. However, the process of political transition in Yemen depends mainly on restoring state institutions, controlling security, returning to complete the stages of the transitional period, and resolving problems and disputes over the outcomes of the national dialogue.

References

1. Abdallah, K., & Aboudi, S. (2015, March 26). Yemeni leader Hadi leaves country as Saudi Arabia keeps up airstrikes. *Reuters*. Retrieved from <https://www.reuters.com/article/uk-yemen-security-idUKKBN0ML0YM20150326>.
2. Ahmed, E., & al-Rawhani, O. (2018). *The need to build state legitimacy in Yemen*. Sanaa Centre for Strategic Studies.
3. Akin, M. (2019). *A self-defeating war regional powers and local actors in Yemen*. TRT World Research Centre.
4. Al Dosari, A., & George, M. (2020). Yemen war: An overview of the armed conflict and role of belligerents. *Journal of Politics and Law*, 13(1), 53–65.
5. Ali, N. M. (2015). Yemen: Another Somalia in the Arabian Peninsula. *Asian Journal of Humanities and Social Studies*, 3(4), 318–332.
6. Al-Kahwati, A. (2019). Peace in Yemen. *The Swedish Institute Of International Affairs/ UI. SE*, 5(2019), 3–17.
7. Al-Masdar Online. (2016, September 13). The Islah Party's statement on its 26th Anniversary. Retrieved from <https://almasdaronline.com/article/84536>.
8. Al-Moshki, A. I. (2014, September 22). Peace and National Partnership Agreement signed. *Yemen Times*. Retrieved from <https://www.thefreelibrary.com/Peace+and+National+Partnership+Agreement+signed.-a0383362699>.
9. Al-Muslimi, F. (2018). *The Iran Nuclear deal and Yemen's war: An opportunity for EU statecraft*. Sana'a Center For Strategic Studies.

10. Al-Shargabi, A. M. (2013). The historic bloc for the revolution of freedom and change in Yemen: From formation to disintegration. In H. Krayem (Ed.), *The Arab Spring: Revolutions for deliverance from authoritarianism: Case studies* (pp. 103–119). L'Orient Des Livres.
11. Alshuwaiter, M. (2020). *President Hadi and the future of legitimacy in Yemen*. Middle East Institute.
12. Al-Tamimi, A. A. A., & Venkatesha, U. (2020). Arab Spring in Yemen: Causes and consequences. *Shodh Sarita*, 7(28), 59–63.
13. Al-Tamimi, A. A. A., & Venkatesha, U. (2021). The main factors of Yemeni conflict: An analysis. *JDP (Jurnal Dinamika Pemerintahan)*, 4(2), 1–14.
14. Alwazir, A. Z. (2017). Yemen's enduring resistance: Youth between politics and informal mobilization. In M. Asseburg and H. Wimmen (Eds.), *Dynamics of transformation, elite change and new social mobilization* (pp. 170–191). Routledge.
15. Amnesty International. (2017, July 10). Court ruling over UK arms sales to Saudi Arabia a “deadly blow” to Yemeni Civilians. July 10. Retrieved from <https://cutt.ly/pVITwNK>.
16. Arimatsu, L., & Choudhury, M. (2014). *The legal classification of the armed conflicts in Syria, Yemen and Libya*. Chatham House.
17. Arraf, S. (2017). *The War Report 2017*. Geneva Academy of International Humanitarian Law and Human Rights.
18. Baron, A. (2019). *Foreign and domestic influences in the war in Yemen*. Virginia Tech Publishing.
19. Bayoumy, Y., & Ghobari, M. (2014, December 15). Confirmed: Iran's foreign military arm is backing Yemeni rebels who took control of the country. *Business Insider*. Retrieved from <https://www.businessinsider.com/r-iranian-support-seen-crucial-for-yemens-houthis-2014-12?IR=T>.
20. Bonnefoy, L., & Poirier, M. (2010). The Yemeni congregation for reform (al-Islâh): The difficult process of building a project for change. In C. Myriam and K. Karam (Eds.), *Returning to political parties?* (pp. 61–99). Lebanese Center for Policy Studies.
21. Brandt, M. (2013). Sufyân's “hybrid” war: Tribal politics during the Ḥūthī conflict. *Journal of Arabian Studies*, 3(1), 120–138.
22. Brandt, M. (2017). *Tribes and politics in Yemen: A History of the Houthi conflict*. Oxford University Press.
23. Brehony, N. (2020). The British role in the Yemen crisis. In S. W. Day and N. Brehony (Eds.), *Global, regional, and local dynamics in the Yemen Crisis* (pp. 33–49). Palgrave Macmillan.
24. Broder, J. (2017, December 29). Hit and missile. *Scribd*. Retrieved from <https://www.scribd.com/article/367699143/Hit-And-Missile>.
25. Brownlee, J., Masoud, T., & Reynolds, A. (2013). Tracking the “Arab Spring”: Why the modest harvest? *Journal of Democracy*, 24(4), 29–44.
26. Clausen, M. L. (2015). Understanding the crisis in Yemen: Evaluating competing narratives. *The International Spectator*, 50(3), 16–29. DOI: 10.1080/03932729.2015.1053707.

27. Clausen, M. L. (2018). Competing for control over the state: The case of Yemen. *Small Wars & Insurgencies*, 29(3), 560–578. DOI: 10.1080/09592318.2018.1455792.
28. Conflict Armament Research. (2017). *Iranian technology transfers to Yemen*. Conflict Armament Research.
29. Dahlgren, S. (2018). The Southern Transitional Council and the War in Yemen. *ReliefWeb*. Retrieved from <https://reliefweb.int/report/yemen/southern-transitional-council-and-war-yemen>.
30. Doucet, L. (2020, April 26). Yemen war: Separatists declare autonomous rule in South. *BBC*. Retrieved from <https://www.bbc.com/news/world-middle-east-52428998>.
31. Durac, V. (2019). The limits of the sectarian narrative in Yemen. *Global Discourse: An Interdisciplinary Journal of Current Affairs*, 9(4), 655–673. DOI: 10.1332/204378919X15718898814430.
32. Forster, R. (2017). The southern transitional council: Implications for Yemen's peace process. *Middle East Policy*, 24(3), 133–144.
33. Forster, R. (2019). *Yemen's 'handshake moment': What other peace processes can tell us about the Riyadh Agreement*. Political Settlements Research Programme, University of Edinburgh.
34. Heywood, A. (2015). *Political theory: An introduction*, 4th Ed. Macmillan International Higher Education.
35. Hill, G., & Nonneman, G. (2011). *Yemen, Saudi Arabia and the Gulf states: Elite politics, street protests and regional diplomacy*. Chatham House.
36. International Crisis Group (ICG). (2014). *The Huthis: From Saada to Sanaa*. International Crisis Group.
37. International Crisis Group (ICG). (2015). *Yemen at War*. Middle East Briefing N°45. International Crisis Group.
38. Jerrett, M. (2017). Rise, fall, and rise again: Perspectives on Southern Yemen security challenges. In M. C. Heinze (Ed.), *Addressing security sector reform in Yemen. Challenges and opportunities for intervention during and post-conflict* (pp. 27–32). CARPO – Center for Applied Research in Partnership with the Orient.
39. Johnsen, G. D. (2018). *A roadmap for Yemen peace talks*. The Century Foundation.
40. Johnsen, G. D. (2021). *Foreign actors in Yemen: The history, the politics and the future*. Sana'a Center For Strategic Studies.
41. Juneau, T. (2010). Yemen: Prospects for state failure – Implications and remedies. *Middle East Policy*, 17(3), 134–152.
42. Juneau, T. (2016). Iran's policy towards the Houthis in Yemen: A limited return on a modest investment. *International Affairs*, 92(3), 647–663.
43. Juneau, T. (2020). The UAE and the war in Yemen: From surge to recalibration. *Survival*, 62(4), 183–208.
44. Kendall, E. (2017). *Iran's fingerprints in Yemen: Real or imagined?*. Atlantic Council.
45. Lackner, H. (2017). *Yemen in crisis: Autocracy, neo-liberalism and the disintegration of a state*. Saqi Books.

46. Landry, C. (2015, May 1st). Iran arming Yemen's Houthi rebels since 2009: UN report. *Middle East Eye*. Retrieved from <https://www.middleeasteye.net/news/iran-arming-yemens-houthi-rebels-2009-un-report>.
47. Lewis, M., & Templar, K. (2018). *UK personnel supporting the Saudi armed forces – Risk, knowledge and accountability*. Mike Lewis Research.
48. Mancini, F., & Vericat, J. (2016). *Lost in transition: UN mediation in Libya, Syria, and Yemen*. International Peace Institute.
49. Mansour, R., & Salisbury, P. (2019). *Between order and chaos: A new approach to stalled state transformations in Iraq and Yemen*. Chatham House.
50. Mohamed, W., & Fortin, T. (2017, September 19). Exposed: France's arms dealers making a killing in Yemen. *The New Arab*. Retrieved from <https://english.alaraby.co.uk/opinion/exposed-frances-arms-dealers-making-killing-yemen>.
51. Mussed, F. (2020). *Between war and politics: Future of Islah Party after 30 years of Foundation*. Abaad Studies & Research Center.
52. Nevola, L., & Shiban, B. (2020). The role of "coup forces," Saleh, and the Houthis. In S. W. Day and N. Brehony (Eds.), *Global, Regional, and Local Dynamics in the Yemen Crisis* (pp. 233–251). Palgrave Macmillan.
53. Phillips, C. (2016). *The battle for Syria*. Yale University Press.
54. Phillips, S. (2011). *Yemen and the politics of permanent crisis*. Routledge.
55. Phillips, S. (2017). The norm of state-monopolised violence from a Yemeni perspective. In C. Epstein (Ed.), *Against International Relations Norms. Postcolonial perspectives* (pp. 138–157). Routledge.
56. Ramani, S. (2018). Russia's mediating role in Southern Yemen. Carnegie Endowment for International Peace.
57. Riedel, B. (2018). *After Khashoggi, US arms sales to the Saudis are essential leverage*. Brookings.
58. Rugh, W. A. (2015). Problems in Yemen, domestic and foreign. *Middle East Policy*, 22(4), 140–152.
59. Salisbury, P. (2011). *Yemen's economy: Oil, imports and elites*. Chatham House.
60. Salisbury, P. (2017). *Yemen. National chaos, local order*. Chatham House, The Royal Institute of International Affairs.
61. Salisbury, P. (2018). *A multidimensional approach to restoring state legitimacy in Yemen*. The LSE-Oxford Commission on State Fragility, Growth and Development.
62. Salmoni, B. A., Loidolt, B., & Wells, M. (2010). *Regime and periphery in northern Yemen: The Huthi phenomenon*. Rand Corporation.
63. Saudi Ministry of Foreign Affairs. (2017). *Saudi Arabia and the Yemen Conflict*. Saudi Ministry of Foreign Affairs.
64. Schmitt, E., & Worth, R. F. (2012, March 15). With arms for Yemen rebels, Iran seeks wider Mideast role. *New York Times*. Retrieved from <https://www.nytimes.com/2012/03/15/world/middleeast/aiding-yemen-rebels-iran-seeks-wider-mideast-role.html>.

65. Schmitz, C. (2014). *Yemen's national dialogue*. Middle East Institute.
66. Scott, S. (2011). *Legality*. The Belknap Press of Harvard University Press.
67. Sharp, J. M. (2015). *Yemen: Background and U.S. relations*. Congressional Research Service.
68. Shujahi, F. K., & Shafiq, M. (2018). Evaluating Iran-Saudi strategic competition in Middle East: Implications for regional security. *NDU Journal*, 32(1), 142–149.
69. Soudias, D., & Transfeld, M. (2014). *Mapping popular perceptions: Local security, insecurity and police work in Yemen*. Yemen Polling Center.
70. Strobel, W., & Hosenball, M. (2015, March 28). Elite Iranian guards training Yemen's Houthis: US officials. *Reuters*. Retrieved from <https://www.reuters.com/article/uk-yemen-security-houthis-iran-idUKKBN0MN2MA20150327>.
71. Terrill, W. A. (2014). Iranian involvement in Yemen. *Orbis*, 58(3), 429–440.
72. UNSC. (2015). *February 2015 Monthly Forecast: Middle East, Yemen*. United Nations Security Council.
73. UNSC. (2015, April, 14). United Nations Security Council Resolution 2216. UNSC.
74. UNSC. (2017). Final Report of the Panel of Experts, Para 42, p. 18. UNSC.
75. UNSC. (2018, January 26). Final Report of the Panel of Experts on Yemen. 294–96, U.N. Doc. S/2018/594. UNSC.
76. Zweiri, M. (2016). Iran and political dynamism in the Arab world: The case of Yemen. *Digest of Middle East Studies*, 25(1), 4–18.

China: The Story of a Missed Opportunity. How China Managed to Disregard the South China Sea Ruling

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Abstract: On July 12, 2016 an international tribunal (registered with The Hague Permanent Court of Arbitration) ruled against China's territorial claims in the South China Sea, arguing that the Chinese historic rights within the Nine Dash-Line map have no valid effect under the United Nations Convention on the Law of the Sea (UNCLOS). The tribunal's decision came at a time when tensions in the South China Sea had reached a very high level amid increasing maritime incidents caused by China and the Chinese government's construction of artificial islands in the open sea. What was supposed to be a major victory against China for the US-backed states (Vietnam, Philippines), turned out to be only a symbolic success for the Philippines. China not only rejected the sentence, but continued to conduct provocative naval exercises, harass other foreign ships and build artificial islands for military purposes. Using historical research and comparative analysis, this paper illustrates how China's rejection of the ruling was facilitated by a number of legal, economic and political factors that have diminished international reactions and pressures on the Chinese government: the non-ratification of UNCLOS by the US, the lack of coercive mechanisms to enforce international rulings, the economic interdependence between China and other regional states and the precedents set by other major powers.

Keywords: South China Sea, Permanent Court of Arbitration, UNCLOS, maritime claims, historic rights.

Introduction

One of the most important episodes in the South China Sea territorial disputes took place in July 2016 when, in the international lawsuit filed by the Philippines, the Permanent Court of Arbitration in The Hague ruled against most of the claims brought by the People's Republic of China

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(Permanent Court of Arbitration, 2016). The process began in early 2013 when the Philippines decided to seek international assistance in clarifying the legal status of the islands and adjacent waters. The main topics addressed included the legality of the Nine-Dash Line map, Chinese naval activities in Philippine waters and the legal status of islands claimed under UNCLOS (Department of Foreign Affairs of the Republic of the Philippines, 2013).

Right from the start, the Chinese government condemned the Philippines' decision to internationalize the dispute, believing that territorial differences of this kind should be resolved through bilateral talks and not by appealing to international bodies. Also, it rejected the validity of the arbitral tribunal and the lawsuit filed by the Philippines, refusing to participate in it for its entire duration (Ministry of Foreign Affairs of the People's Republic of China, 2014).

Geopolitical background

Territorial disputes in the South China Sea date back to the mid-20th century, when six of the eight regional states (China, Taiwan, Vietnam, Philippines, Malaysia, Brunei) became increasingly attracted by the strategic and economic importance of the sea. The South China Sea connects the Pacific and Indian Oceans and is one of the world's main maritime trade routes. Annually, this area is transited by goods and commodities worth more than \$5 billion, with each littoral state heavily involved in maritime trade activities (Kaplan, 2011). At the same time, this area contains large quantities of oil and liquefied gas that could pave the way for countries to achieve energy independence (U.S. Energy Information Administration, 2013). As such, the South China Sea is one of the world's most important trading conglomerates.

The main problem, however, lies in the fact that both the trade routes and the location of resources are in the central area of the sea, which is why each state tries to interpret maritime legislation in such a way as to obtain as many economic and strategic advantages as possible. Additionally, with the evolution of the international maritime law, states have also updated their territorial claims and expanded their naval activities. As a consequence, maritime incidents have started to occur and have multiplied particularly in the last decade with the accession to power of Chinese President Xi Jinping. China has been involved in almost every maritime incident since the first UNCLOS conference took place in 1958 and has always taken the first step in these conflicts. The main reasons why the PRC has been consistently involved in these maritime incidents are the development of its naval capabilities and the scale of its claims.

Thus, the Philippines' decision to go to an international court was intended to bring more clarity to the way in which states should apply the UNCLOS provisions and obtain international support in their differences with China.

Literature review

Discussions regarding the implementation of the latest international law regulations in the South China Sea gained momentum with the entry into force of UNCLOS in 1994. The main issue was how states would apply UNCLOS, as they were faced with updating their domestic maritime legislation and taking into account both the new provisions of the convention and the old principles of customary maritime law.

Valencia, Van Dyke and Ludwig (1997) found that the intensification of the divergence in the 1990s occurred against the background of China's decision to accelerate the process of collecting oil resources and restricting other states' access to the South China Sea. The authors note how the claimants have been expanding their number of occupied islands every year, even though most of them are uninhabitable and therefore do not generate maritime rights. Based on these observations, Van Dyke and Valenica (2000) proposed several scenarios that focus more on political compromises and less on maritime legislation. Shicun and Keyuan (2013) conducted an analysis of the applicability of UNCLOS at the regional level, highlighting the problem of overlapping maritime boundaries that fails to be resolved through regional forms of cooperation. Military activities in exclusive economic zones and the risks posed by arming states were highlighted among the most important topics. As this was a period marked by the emergence of multilateral regional bodies such as ASEAN, the role that regional cooperation can play in de-emphasizing the different interpretations of UNCLOS was also raised. The former deputy prime minister of Singapore, S. Jayakumar (2005), noted that after two decades since UNCLOS was concluded, numerous opportunities have arisen for cooperation on resource exploitation, biodiversity protection and counter-terrorism. As such, the South China Sea states should use the ASEAN institutional framework to strengthen their regional cooperation.

International academic attention started to shift to the legality of China's claims in the late 2000s. This was because the Chinese government decided to bring the 1947 nine-dash line map back to the forefront to claim the South China Sea on the basis of historical rights. This has created a division among scholars on how to interpret the Chinese claims, with two main strands of opinion being identified: pro-Chinese (confirmed China's historical sovereignty) and anti-Chinese claims (considered that China violates the international maritime law).

To illustrate the validity of Chinese arguments, Guoqiang (2017) showed how the empire's first contact with islands occurred in the 2nd century BC, when the first expeditions to the high seas were made and territories were given local names. Thus, China occupied and carried out socio-economic activities on uninhabited territories, fulfilling the provisions of customary international law regarding the means of acquiring territories. Shicun (2013) illustrated that, until the emergence of the Westphalian concept, the mandala political system predominated in Southeast Asia. It was inspired by the

Confucian culture and stipulated that the power of the emperor was conferred by the number of the peoples rather than the size of the occupied territories. As a result, the islands in the South China Sea were under the control of the imperial court even though it did not have a constant physical presence. Granados (2006) focused on China's post-World War II claims and invoked numerous Chinese expeditions and administrative takeover ceremonies of archipelagos as evidence of historical rights. Samuels (2005) has been more moderate in his views on the validity of the Chinese evidence. He confined himself to outlining the events leading up to China's claims, highlighting the historical arguments put forward by the Chinese state.

On the other side, one of the most vocal critics of the legality of the Chinese claims has been British journalist Bill Hayton (2017). According to him, many Anglo-Saxon scholars who opined in favour of Chinese arguments (Dieter Heinzig, Marwyn Samuels, Bryan Murphy, Stefan Talman) have drawn on local Chinese historiography without consulting alternative sources. Therefore, the degree of objectivity and accuracy of historical events of these works is reduced. He also pointed out problems with the nine-dash line map or the translations of the Chinese names of the archipelagos, revealing that they were inspired by British historiography (2019). Additionally, Hayton (2014) centralized the findings of several historians and anthropologists (Leonard Blussé, Derek Heng, Pierre-Ives Manguin, Roderik Ptak, Angela Schottenhammer, Nicolas Tarling, Geoff Wade sau Li Tana) that mentioned there are no records of the ethnic peoples who occupied the South China Sea archipelagos during the first millennium. Consequently, no nation is entitled to use the historical argument, given that it has not consistently administered the claimed territories. Florian and Pierre-Marrie Dupuy (2013) have used official Chinese government documents and documents issued by international bodies to show that China has taken up in an evasive and ambiguous way the international provisions on customary law, without making a distinction between territories capable of generating exclusive economic rights and those that do not offer any legal privilege. The two also illustrated numerous technical errors in the drawing of the nine-dash line map, such as the lack of geographical coordinates or the incorrect drawing of lines delimiting China's territorial claims. For this, they referred to the *Burkina Faso v. Republic of Mali*, the *Palmas Island* and the *Nicaragua v. Honduras* cases, where the court did not admit as evidence inaccurate maps without exact coordinates.

The literature review has thus illustrated that the division in international academia is caused by the way researchers have interpreted the historiography of the region. The studies that have given the Chinese argument the upper hand have predominantly used historical arguments, avoiding to pronounce on the validity in terms of UNCLOS provisions. On the other hand, criticisms of Chinese claims have highlighted numerous incompatibilities between the so called historic rights and the new UNCLOS provisions.

The evolution of international maritime law

International maritime law is the part of public international law that regulates interstate maritime interactions such as freedom of navigation, jurisdiction of states or operating privileges. It consists of *customs*, *general principles* recognized by nations, *treaties*, *court decisions* and *legal research*. Of these, the first three are the primary sources of law, as they have equal legal force and are most commonly used (LL.M. Program in International Law + Fletcher Maritime Studies Program, 2017).

The international maritime law is governed by *the principle of freedom*, *the principle of sovereignty* and *the principle of the common heritage of mankind* (Tanaka, 2012, p. 37). The first one ensures the peaceful use of the seas and oceans for civil, commercial or military purposes, and the second one promotes the interests of states in areas close to shore. The two principles complement each other to ensure that national interests are protected. The third one is designed to ensure that all states participate in the collective effort to protect the maritime environment.

At treaty level, the United Nations Convention on the Law of the Sea (UNCLOS) is the main international agreement governing the legal regime of waters. It is a codification of customs developed over centuries and is considered the modern version of international maritime law or the „constitution of the seas” (United Nations, 1983, p. xxxiv). Jurisprudence is provided by the International Court of Justice in The Hague, the UN judicial body that settles disputes between states and provides advisory opinions that may acquire legal force. Each member country of the organisation is automatically part of the Court’s statute, but may decline its jurisdiction (Crawford, 2012, p. 22).

Customary maritime law

Customary law is made up of the totality of legal rules formed over the centuries by their constant repetition in the actions taken by states. To obtain the status of custom, any principle must constitute the general practice of nations and be accepted by them as a factor of legality (*opinio juris*). The development of the principle is therefore influenced by its uniformity and consistency (Crawford, 2012).

The development of customs in maritime law began in the 15th century, when European rulers divided their oceans to avoid military conflicts and thus denied access to other countries (*mare clausum*). A hundred years later, the concept of free navigation (*mare liberum*) replaced the previous principle and the sea became international territory where any nation could sail and trade. In the early 18th century the first modern maritime delimitations appeared, in which the limit of territorial waters was set at three nautical miles from the mainland. The distance was considered sufficient for ships to be protected from shore guns (LL.M. Program in International Law + Fletcher Maritime Studies Program, 2017). Also, during this period, four ways of acquiring and transferring

sovereignty were developed:

- cession: acquisition by relinquishing another state's rights;
- occupation: acquisition on the basis of the non-existence of any previous sovereignty („terra nullius”);
- prescription: acquisition by tacit acceptance of other states;
- accretion: acquisition by physical annexation of the area claimed by the central territory.

Some of these principles are still valid today and are used in various international agreements (Lindley, 1926, pp. 124–178; Crawford, 2012, p. 220; Sharma, 1997, pp. 36–37).

UNCLOS

The modern regulations of maritime law emerged when it was codified by the UN. The new provisions revised the 17th century principle of free navigation, which simplistically delimited territorial waters and international fisheries.

There were three conferences that preceded the formal adoption of the Treaty. The first one took place in Geneva in 1958, following which the first five official documents were adopted two years later (United Nations, 1958):

- Convention on territorial waters and contiguous zones;
- Convention on International Waters;
- Convention on Fishing and Conservation of Living Resources in International Waters;
- Convention on the Continental Shelf;
- Optional Protocol on the obligation to resolve maritime disputes.

The second conference, held in 1960, did not provide new agreements but rather reflected the ideological rupture generated by the Cold War. Thus, it was not possible to establish a uniform practice in the delimitation of territorial waters, with almost ten distinct methods of calculating them (United Nations, 1960). The last conference was held in 1973 and focused on identifying a procedural consensus on the application of UNCLOS. As such, more than 160 states were involved and discussions continued until 1982, when the new Convention was voted on. It entered into force in 1994, was adopted by 168 states and signed by a further 14 (United Nations, 1984). Although the United States of America was among the proactive supporters of the Convention, it did not ratify it but chose only to retain its status as a signatory party (LL.M. Program in International Law + Fletcher Maritime Studies Program, 2017). The final version incorporated over 400 technical and procedural stipulations and is still the form used today. It covered the issues of States' territorial delimitations, exploitation rights, transitional arrangements, scientific activities, environmental protection and the resolution of disputes (United Nations, 2022).

The most important UNCLOS regulation concerns the delimitation of maritime rights of states and refers to territorial sovereignty and sovereign rights. The first category includes internal, territorial and archipelagic waters and international straits. The second comprises the contiguous zone, the exclusive economic zone and the continental shelf, where legal privileges are limited. The remaining areas are part of international waters that do not belong to any state (Tanaka, 2012).

UNCLOS also regulates the geographical characteristics of the territories, so the maritime rights that these territories generate depend on the possibility that the territories provide socio-economic conditions: islands, rocks (atolls, sandbanks, reefs), artificial islands. Only the islands that remain above the sea during high tides are capable of supporting socio-economic activities, so those are the only ones that generate maritime rights. (Tanaka, 2012).

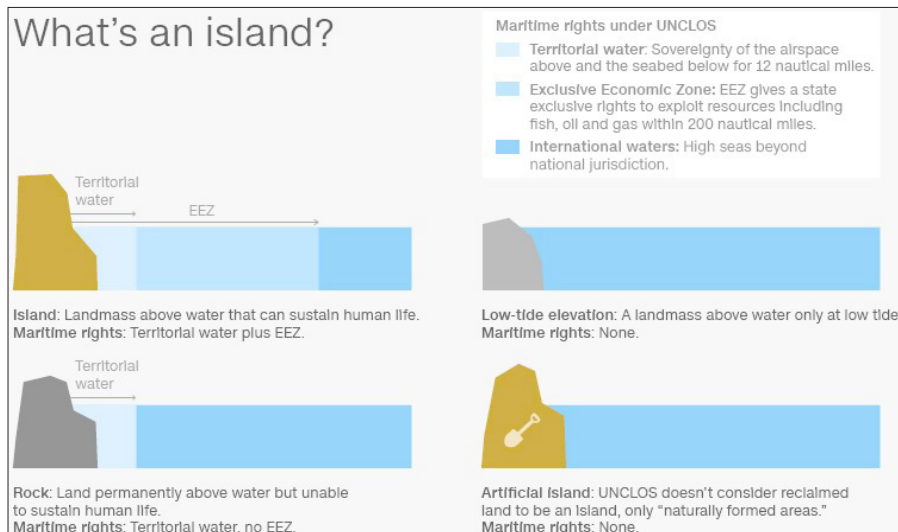


Figure 1: Island classification according to UNCLOS

Source: Canny, 2017.

As with customary law, UNCLOS also contains rules on the settlement of territorial disputes. The International Tribunal for the Law of the Sea is the intergovernmental forum mandated by the UN since 1982 to adjudicate disputes concerning the application of the Law of the Sea Treaty (International Tribunal for the Law of the Sea, 2019). Its jurisdiction applies to all disputes that meet the admissibility conditions laid down in the Convention. The role of the Tribunal is an important one, given that the modalities for amicable settlement of maritime disputes are loosely regulated. However, if the parties do not agree on dispute settlement procedures, the Convention provides that

the case be heard by an Annex VII arbitral tribunal appointed by the Permanent Court of Arbitration.

A major role in China's claims has been played by historical rights. The issue of historical rights is a complex one, as they were not codified by UNCLOS, but remained perceived as a separate category of customary law (Kopela, 2017, pp. 185–186). In these circumstances, they have been interpreted differently by states and experts, so the Chinese government has seized this opportunity to argue that, in the case of South China, customary law should take precedence over UNCLOS.

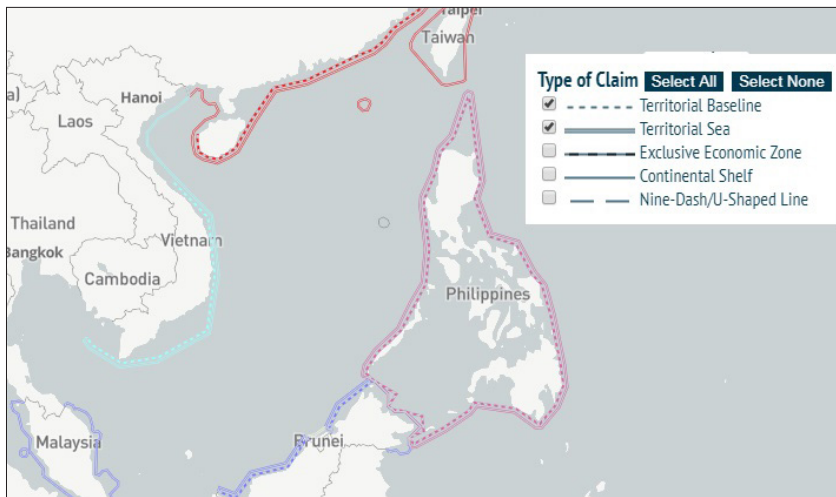


Figure 2: Territorial Sea Delimitation in the South China Sea according to UNCLOS

Source: Asia Maritime Transparency Initiative. (2022b).

Who's Claiming What? Retrieved from <https://amti.csis.org/maritime-claims-map/>.

Summary of the judgment

According to the Note Verbale sent by the Philippines, clarifications have been requested regarding the validity of the historical rights claimed by China, the geographical status of some maritime features and the patrolling and resource exploitation actions carried out by the Chinese state. The Philippines considered that China violated its maritime rights through its activities in the Scarborough Shoal, Spratly area and through the violation of the exclusive economic zone as a result of the South China Sea claim under the nine lines map (Department of Foreign Affairs of the Republic of the Philippines, 2013).

China refused to participate, claiming that only the International Court of Justice can review disputes over the territorial sovereignty of states and considered the Tribunal to be illegally established (Ministry of Foreign Affairs of the People's Republic of China,

2014). Two years after the trial began, the Tribunal, constituted under the authority of the Permanent Court of Arbitration in The Hague, unanimously decided that it met the conditions to hear the case (Permanent Court of Arbitration, 2015).



Figure 3: Photograph from Jurisdictional Hearing — July 2015 — Hearing in Session

Source: Permanent Court of Arbitration (2015). The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China). Retrieved from <https://pcacases.com/web/sendAttach/1490>.

Without ruling on the issue of sovereignty or the delimitation of maritime boundaries between States, the Tribunal ruled on 7 of the 15 points raised by the Philippines, awarding the Philippines a judgment in each case. It concluded that:

- Any alleged pre-existing historical evidence is no longer valid if it contravenes the provisions of UNCLOS. Thus, there is no legal basis for China to claim the South China Sea on the basis of historical arguments and the map of the nine lines.
- No territory in the Spratly archipelago generates EEZ as it cannot support socio-economic development, and part of the territories in the Scarborough Zone does not even generate maritime rights related to territorial waters.
- China has violated the EEZ of the Philippines by building artificial islands, exploiting underground resources and restricting access to Philippine civilian vessels.
- China has contributed to the degradation of the region's marine biodiversity and ecosystem through fishing activities and the construction of artificial islands (Permanent Court of Arbitration, 2016).

International reactions

Despite the fact that the ruling was a huge victory for the Philippines, its implementation has remained in question to date. Although the Tribunal's decisions are binding under Article 296 of the treaty, China has refused to do so, refusing to accept the involvement of the international forum and maintaining its view of its sovereignty over the disputed islands (Government of the People's Republic of China, 2016; Ministry of Foreign Affairs of the People's Republic of China, 2016). Moreover, the Philippine president adopted an unexpectedly pro-Chinese stance and expressed his willingness to disregard the ruling in favor of strengthening bilateral diplomatic relations with China (De Castro, 2017, pp. 166–167).

Under these circumstances, Vietnam has taken the most vehement position against the implementation of the sentence. Malaysia and Brunei appreciated the Tribunal's involvement but took neutral positions on the implementation of the sentence. Taiwan was the only country to side with China, due to its strategic interests. It occupies the largest island in Spratly, and accepting the settlement would have meant losing the exclusive economic zone, as the archipelago has been declared uninhabitable. (LL.M. Program in International Law + Fletcher Maritime Studies Program, 2017; Asia Maritime Transparency Initiative, 2022a).

The inability to compel China to comply with the judgment illustrated the limitations of the UN procedures. This adds to a list of cases where China has taken advantage of its permanent membership of the UN Security Council to block various resolutions dictated against Beijing's interests (Malik, 2005, pp. 20–21). The Chinese government's hostile attitude towards the internationalisation of South China Sea disputes was therefore predictable, especially as public statements by Chinese leaders have emphasised a preference for bilateral dialogues over multilateral negotiations. At the same time, ASEAN's lack of response has contributed to the continued tension and uncertainty. It was only the second time in the organisation's history that ASEAN member countries did not take an official position on a decision of an international court (Hiep, 2016, p. 3). This situation has encouraged China to offer other countries political and economic favours through bilateral agreements, accentuating ASEAN's institutional gridlock.

The geopolitical context after the ruling

The fact that China was able to so easily overrule the court's decision and continued its artificial island-building operations and aggression against other ships has highlighted several matters. Firstly, there is no international mechanism for enforcing the decisions of international courts. Therefore, the prospect of other countries such as Malaysia or Vietnam using this option in the future has become less feasible. Secondly, the Philippines preferred not to jeopardize its economic and political realities with China, given the major weight that trade between the two countries has for the Philippine

state. Therefore, a major power can successfully use its economic influence for gaining significant political leverage in the region. Thirdly, the reaction of the Western powers, led by the United States, was surprisingly measured. There has been no sustained pressure on China or even an attempt to try to impose economic sanctions on Chinese vessels. Looking back in recent history, however, we note that there have been cases where major powers have taken a similar attitude to that of China when faced with an unfavorable ruling

United States vs. Nicaragua (1986)

In 1986 the International Court of Justice ruled on Nicaragua's complaint about the financial and military support provided by the United States to rebels fighting against the Nicaraguan government. Through its involvement, the US was accused of violating a number of international treaties and conventions, including the provisions of the United Nations Charter relating to respect for territorial integrity and national political independence. The US refused to participate in the trial, citing the lack of jurisdiction of the Court. Moreover, it dissolved the Treaty of Friendship, Commerce and Navigation between the two countries to invalidate the court's legitimacy. The ruling confirmed violations of both treaties and customary law by the US, which was ordered to stop supporting the insurgents and pay moral damages to Nicaragua (International Court of Justice, 1986).

None of the Court's decisions have been respected by the US government, which has also refused to negotiate compromise solutions. For these reasons, Nicaragua appealed to the UN Security Council to take punitive measures against the US. As a permanent member, however, the United States vetoed all resolutions directed against it. The two countries later made peace with the election of a new Nicaraguan president (Nguyen & Vu, 2016). It was the first time that a state refused to participate in the trial and did not enforce the court's sentence.

The Great Britain vs. Mauritius (2010)

In 2010 Mauritius applied UNLCOS procedures to challenge the UK's Marine Protected Area status of the Chagos Islands in the British Indian Ocean Territory. The British move was perceived by the Mauritian government as an attempt to prevent the long-term return of the indigenous population to the region. As such, the illegality of the British administrative separation of the archipelago from the rest of the territory was invoked. Although Britain has shown itself willing to cede sovereignty of the territory once it no longer serves defensive military purposes, the lack of diplomatic progress has led to the internationalisation of the dispute (Permanent Court of Arbitration, 2015).

The Permanent Court of Arbitration invalidated the UK's claim in 2015, as Mauritius has maritime rights in the area under UNCLOS. The UN General Assembly also called

in 2019 for the release of the Chagos Islands by the end of the year. The request was made after the International Court of Justice also ruled against the UK, deeming its approach unlawful. In both cases, the British government ignored the courts' orders and challenged their jurisdiction (Bowcott & Borger, 2019).

Russia vs. The Netherlands (2013)

A Dutch-flagged Greenpeace ship sailed to the Arctic in 2013 to protest against regional resource exploitation. After tensions escalated in the area of a Russian oil rig, all protesters were arrested on charges of piracy and illegal entry into Russia's exclusive economic zone. The Dutch request that the entire crew be released was not met, so the Dutch state went to court. Russia refused to participate in the trial, citing its failure to ratify provisions on court involvement in cases involving violations of sovereign rights (Nguyen & Vu, 2016).

ITLOS has ordered the release of the detainees for the sum of €3.5 million, pending a final sentence. The Russian government initially opposed this decision but released all prisoners after two months under the auspices of internal ordinances. Subsequently, the Permanent Court of Arbitration ruled that Russia's actions violated UNCLOS and ordered it to pay compensation to the Dutch state. Again, Russia ignored the ruling and did not recognise the Court's jurisdiction (Permanent Court of Arbitration, 2017). The two countries reached an agreement in 2019 in which Russia pledged to pay €2.7 million in damages (The Ministry of Foreign Affairs of the Russian Federation, 2019).

All these examples illustrate that when a great power is involved in an international trial, there is a good chance that it will reject an unfavourable ruling. None of these powers have respected the decisions of the courts and have defied their authority by adopting official positions. At the same time, they have used diplomatic channels to resolve differences: the US has supported Nicaragua's new president, Russia has finally released Dutch activists, Britain has promised to return territory as soon as it is no longer used for military purposes, and China has offered economic favours to the South China Sea states (Allison, 2016; Llamzon, 2008). The effectiveness of the international legal system is therefore a matter of debate, since its current form favours differing interpretations and insufficiently regulates the means of enforcement of judgments (Donoghue, 2014).

On the China-Philippines case, Chinese leaders blamed their US counterparts for repeated pressure to comply with the ruling, as the US has not ratified UNCLOS. (The Embassy of the People's Republic of China in New Zealand, 2022). The non-ratification of UNCLOS was criticized even by several US officials during the last decade, including the US Secretary of Defense, who stated that the situation has weakened the international credibility of the United States. (US Department of Defense, 2012). Representatives of the Democratic and Republican parties, together with members of the naval forces also drew attention to the need for a firm stance on international maritime law in the

context of increasing Chinese assertiveness in the South China Sea (Office of the Staff Judge Advocate, 2021, p. 86).

In the light of these considerations, it can be argued that China's decision not to comply with the South China Sea maritime rights ruling was facilitated by previous examples of other powers and the lack of clear legal mechanisms governing how such cases are resolved. The US decision not to ratify UNCLOS has also been used by the Chinese government to motivate its decision of not complying with the ruling.

Conclusion

The rejection of the 2016 ruling confirmed China's unwillingness to accept the involvement of any international body in the South China Sea maritime dispute. At the same time, it illustrated that there is no coercive mechanism to force China to comply with the ruling, especially as other major powers have taken a similar attitude to international court decisions. However, in order to maintain their image as a benign power, Chinese leaders have declared their readiness to hold bilateral negotiations with the other countries bordering China, focusing on points of economic and cultural convergence. The implementation of this strategy coincided with the paradigm shift at the White House in 2016, which, through a foreign policy less focused on the Asia-Pacific region, allowed China to avoid the international pressure generated after the ruling.

References

1. Allison, G. (2016, July 11). Of course China, like all great powers, will ignore an international legal verdict. *The Diplomat*. Retrieved from <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>.
2. Asia Maritime Transparency Initiative. (2022a). Arbitration support tracker. Retrieved from <https://amti.csis.org/arbitration-support-tracker/>.
3. Asia Maritime Transparency Initiative. (2022b). Who's claiming what? Retrieved from <https://amti.csis.org/maritime-claims-map/>.
4. Bowcott, O., & Borger, J. (2019, May 22). UK suffers crushing defeat in UN vote on Chagos Islands. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2019/may/22/uk-suffers-crushing-defeat-un-vote-chagos-islands>.
5. Canny, T. (2017, April 2). Legal and practical effects of the South China Sea Arbitration Award (Part I of II). *Michigan Business & Entrepreneurial Law Review*. Retrieved from <http://mbelr.org/legal-and-practical-effects-of-the-south-china-sea-arbitration-ruling-part-i-of-ii/>.
6. Crawford, J. (2012). *Brownlie's principles of public international law*. Oxford University Press.
7. De Castro, R. C. (2017). The Duterte administration's appeasement policy on China and the crisis in the Philippine-US alliance. *Philippine Political Science Journal*, 38(3), 159–181.

8. Department of Foreign Affairs of the Republic of the Philippines. (2013, January 22). SFA Statement on the UNCLOS Arbitral Proceedings Against China. No 13-0211. Department of Foreign Affairs of the Republic of the Philippines.
9. Donoghue, J. E. (2014). The effectiveness of the International Court of Justice. *American Society of the International Law*, 108, 114–118.
10. Dupuy, F., & Dupuy P. M. (2013). A legal analysis of China's historic rights claim in the South China Sea. *The American Journal of International Law*, 107(1), 124–141.
11. Government of the People's Republic of China. (2016, July 12). Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea. Retrieved from http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379493.shtml.
12. Granados, U. (2006). Chinese ocean policies towards the South China Sea in a transitional period, 1946-1952. *China Review*, 6(1), 153–181.
13. Guoqiang, L. (2017). The origins of the South China Sea issue. *Journal of Modern Chinese History*, 11(1), 112–126.
14. Hayton, B. (2019). The modern origins of China's South China Sea claims: Maps, misunderstandings and the maritime geobody. *Modern China*, 45(2), 127–170.
15. Hayton, B. (2014). *The South China Sea. The struggle for power in Asia*. Yale University Press.
16. Hayton, B. (2017). When good lawyers write bad history: Unreliable evidence and the South China Sea territorial dispute. *Ocean Development and International Law*, 48(1), 17–34.
17. Hiep, L. H. (2016). Can ASEAN overcome the 'Consensus Dilemma' over the South China Sea? *ISEAS-Yusof Ishak Institute*, 58, 1–8.
18. International Court of Justice (1986, June 27). Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America).. Retrieved from <https://www.icj-cij.org/en/case/70/judgments>.
19. Jayakumar, S. (2005). UNCLOS – Two decades on. *Singapore Yearbook of International Law*, 9, 1–8.
20. Kaplan, R. D. (2011). The South China Sea is the future of conflict. *Foreign Policy*, 188, 76–85.
21. Lindley, M. F. (1926). *The acquisition and government of backward territory in international law*. Longmans, Green and Co.
22. Kopela, S. (2017). Historic titles and historic rights in the law of the sea in the light of the South China Sea arbitration. *Ocean Development & International Law*, 48(2), 181–207.
23. Llamzon, A. P. (2008). Jurisdiction and compliance in recent decisions of the International Court of Justice. *The European Journal of International Law*, 18(5), 815–852.
24. LL.M. Program in International Law + Fletcher Maritime Studies Program. (2017). *Law of the Sea. A Policy Primer*. The Fletcher School of Law and Diplomacy.

25. Malik, M. J. (2005). Security Council reform: China signals its veto. *World Policy Journal*, 22(1), 19–29.
26. Ministry of Foreign Affairs of the People's Republic of China. (2014, December 7). Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines. Retrieved from https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201412/t20141207_679387.html.
27. Ministry of Foreign Affairs of the People's Republic of China. (2016, July 12). Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines. Retrieved from https://web.archive.org/web/20180127155530/http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml.
28. Nguyen, L., & Vu, T. M. (2016, July 22). After the arbitration: Does non-compliance matter? *Asia Maritime Transparency Initiative*. Retrieved from <https://amti.csis.org/arbitration-non-compliance-matter/>.
29. Office of the Staff Judge Advocate (2021). U.S. Position on the U.N. Convention on the Law of the Sea. *International Law Studies*, 97, 81–88.
30. Permanent Court of Arbitration (2015, October 29). Arbitration between The Republic of the Philippines and The People's Republic of China. *Press Release*.
31. Permanent Court of Arbitration (2015). The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China). Retrieved from <https://pcacases.com/web/sendAttach/1490>.
32. Permanent Court of Arbitration (2015, March 19). Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom). *Press Release*.
33. Permanent Court of Arbitration. (2016, July 12). The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China). *Press Release*.
34. Permanent Court of Arbitration (2017, July 18). Arctic Sunrise Arbitration (Netherlands v. Russia). *Press Release*.
35. Samuels, M. S. (2005). *Contest for the South China Sea*. Routledge.
36. Sharma, S.P. (1997). *Territorial acquisition, disputes and international law*. Martinus Nijhoff Publishers.
37. Shicun, W. (2013). *Solving disputes for regional cooperation and development the South China Sea. A Chinese perspective*. Chandos Publishing.
38. Tanaka, Y. (2012). *The International Law of The Sea*. Cambridge University Press.
39. The Embassy of the People's Republic of China in New Zealand. (2022, April 18). China Stays Committed to Peace, Stability and Order in The South China Sea. Retrieved from http://nz.china-embassy.gov.cn/eng/zxgxs/202204/t20220418_10669051.html.
40. The Ministry of Foreign Affairs of the Russian Federation. (2019, May 17). Joint statement by the Russian Federation and the Kingdom of the Netherlands on cooperation in the Arctic zone of the Russian Federation and dispute settlement. Retrieved from <https://>

archive.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3651941.

41. United Nations (1958). United Nations Conference on the Law of the Sea. Official Records, *Volume II: Plenary Meetings*, A/CONF.13/38.
42. United Nations (1960). Second United Nations Conference on the Law of the Sea. *Official Records, Summary Records of the Plenary Meetings and Meetings of the Committee of the Whole*, A/CONF.19/8.
43. United Nations (1983). Remarks of President Tommy Koh, Chair of the Closing Session. *Official Text of the U.N. Convention on the Law of the Sea*.
44. United Nations (1984). Resolutions and Decisions adopted by the General Assembly during its Thirty-Eight Session, *General Assembly Official Records: Thirty-Eight Session*, Supplement No. 47 (A/38/47).
45. United Nations (2022). Third United Nations Conference on the Law of the Sea, *Diplomatic Conferences*. Retrieved from https://legal.un.org/diplomaticconferences/1973_los/.
46. U.S. Department of Defense. (2012, May 9). Law of the Sea Symposium, *Secretary of Defense Speech*. Retrieved from <https://archive.defense.gov/speeches/speech.aspx?speechid=1669>.
47. U.S. Energy Information Administration (2013, April 3). The South China Sea is an important world energy trade route. Retrieved from <https://www.eia.gov/todayinenergy/detail.php?id=10671>.
48. Valencia, M. J., Van Dyke J. M., & Ludwig N. A. (1997). *Sharing the resources of the South China Sea*. Martinus Nijhoff Publishers.
49. Van Dyke J. M., & Valencia, M. J. (2000). How valid are the South China Sea claims under the Law of the Sea Convention? *Southeast Asian Affairs*, 47–63.
50. Shicun, W., & Keyuan, Z. (2013). *Securing the safety of navigation in East Asia*. Chandos Publishing.

Third-Party Funding in International Commercial Arbitration: It is About Time for Regulations

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Abstract: Third-party funding (TPF) is a species of the common law doctrine of maintenance and champerty. With the burgeoning of global trade, the need for funding arbitral proceeding of high magnitude have witnessed an upward trend. TPF is a method wherein the impecunious party to the dispute enters into a contract with a third-party, who is not a party to the arbitration agreement, to finance the arbitration proceeding and run the risk of either paying or receiving the proceeds, costs, or award awarded against or in favor of such party. TPF, on one hand, provides a gateway to justice to the impecunious party and on the other hand, causes an impediment to the recognition and enforcement mechanism of arbitral awards. TPF flourishes as an alternative to support arbitral proceedings by acting as an investment for the financiers but what impact it has on the market, in the long run, is still unclear. TPF assists the struggling party to appoint highly qualified specialists and a learned arbitrator through financial assistance but restricts the party autonomy and raises justifiable doubts as to the independence and impartiality of the arbitrator due to the leverage the financier holds in such an arrangement. Last but not least, TPF may also, at times, result in the disclosure of attorney-client communication to the financier. The present article is an analytical study of TPF as a mechanism in international commercial arbitration and what challenges it poses to its practice. Moreover, the article places reliance on the work of various scholars, and adopting the inductive approach of reasoning, reflects upon the plausible remedies for challenges that TPF poses to international commercial arbitration.

Keywords: Third-Party Funding; Commercial Arbitration; International; Challenges; Regulation.

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Setting up the Stage:

An Introduction to Third-Party Arbitration Funding

The concept of third-party funding (TPF) in international commercial arbitration (ICA) is a novel trend that has swept the international arbitration community on the fence regarding legitimizing its practice while its practice keeps burgeoning among international users. TPF is a phenomenon that holds the potential of getting morphed into mainstream practice in ICA practice. TPF can manifest in many forms, such as contingent or conditional fee arrangement with the attorney, debt instruments, legal proceeding insurance, or a complete transfer of the underlying claim to a third party, consequently, it becomes imperative to have a proper definition to anchor the entire discussion. Nieuwveld and Sahani (2017) have defined TPF as “a financing method in which an entity that is not a party to a particular dispute funds another party’s legal fees or pays an order, award, or judgment rendered against that party, or both” (p. 1). Santos (2017) defined TPF in its general and broad sense as “third-party funding involves an unrelated party providing financial support to a claimholder in order to support litigation or arbitration costs” (p. 918). Whereas Yeoh (2016) has defined TPF narrowly and in light of the third-party funder and not the arrangement itself as “third party funder (TP funder) as (a) a professional person or entity which (b) finances a legal claim or defence in which it has no pre-existing interest, and (c) from which it receives a financial benefit” (p. 116). For the purpose of this article third-party arbitration funding (TPAF) is defined as a method wherein the party to an arbitration agreement enters into a contract with a third-party, who is not a party to the arbitration agreement, to finance the arbitration proceeding and run the risk of either paying or receiving the proceeds, costs, or award awarded against or in favor of such party.

TPF is a species of the common law doctrine of maintenance and champerty. Winfield (1919) in his work pointed out that maintenance and champerty “were known almost exclusively as modes of corruption and oppression in the hands of the King’s officers and other great men” (p. 143). The unleashed sword of the feudal lords upon the distressed peasants was the cause of the development of the doctrine of maintenance and champerty (Cremades, Jr., 2011). In *Campbells Cash and Carry Pty Limited vs. Fostif Pty Limited* (2006, HCA 41 para 68), the High Court of Australia stated:

“The law of maintenance and champerty has been traced to the Statute of Westminster the First (3 Edw I c 25) of 1275. Some trace it back to Greek law and Roman law. Be this as it may, Coke identified maintenance as an offence at common law and champerty was a particular species of maintenance. Although traditionally identified as a common law offence, several early statutes are understood as affirming or declaring that common law...”

Maintenance is the act of financially supporting a stranger’s lawsuit and when such financial support is done with the intention of receiving financial gain from the judgment

in such a lawsuit it is called champerty. The doctrine of maintenance and champerty is founded upon public policy; it is to ensure the proper administration of justice by protecting the defendant from a legal proceeding that is against the public policy (Giles v Thompson, 1993, 2 W.L.R. 908). With the evolution of the social structure and the legal system around the globe, the doctrine of maintenance and champerty are no longer considered an offense under major common law legal systems including England, Australia, and others. Moreover, Major jurisdictions have even abolished maintenance and champerty as a tortious claim under certain instances, such as access to justice to the impecunious party, and administration of justice (Campbells Cash and Carry Pty Limited vs. Fostif Pty Limited, 2006, HCA 41; Giles vs. Thompson, 1993, 2 W.L.R. 908). Lastly, the doctrine of maintenance and champerty is not applicable to arbitration proceedings (Unruh vs. Seeberger, 2007, 2 HKC 609).

Notwithstanding the expedited and final award rendered in an arbitral proceeding, there is an actual fear mounting around the costs of arbitral proceedings, the cost of the arbitrators, the fee of the institution, and over and above all these fees is the stupendous legal representation fee of the attorneys. As per the White and case LLP, International Arbitration Survey (2018), 'Cost' continues to be seen as arbitration's worst feature, followed by 'lack of effective sanctions during the arbitral process', 'lack of power in relation to third parties' and 'lack of speed'. The market for TPF has escalated by over five hundred percent in the last decade (Delaney, 2014). And the factors which influenced the increase in the demand for dispute funding are, according to Nieuwveld and Sahani (2017):

- a. Increasing access to justice.
- b. Companies pursuing a means to seek a meritorious claim without affecting its cash flow to conduct usual business.
- c. Worldwide market turbulence and uncertainty.
- d. Third-party funding arrangements operating as means of raising capital for general operating expenses or the meet new business agendas.
- e. Enabling companies that are facing bankruptcy to seek funding in order to generate cash flow for their business.

In the recent few years, there has been a shift in the perception of the international users regarding adopting TPF to finance ICA, whereas earlier the users were reluctant to adopt TPF but now there is acceptance of TPF among the users (Messina, 2019). However, many prospective parties to ICA do not fully understand the trend of TPAF, that is, what advantages TPAF offers, what are the challenges it entails and how best to tackle such issues? Consequently, it becomes imperative to conduct a detailed study of TPF in ICA in order to make aware the prospective parties regarding TPAF and how to best tackle the challenges posed by TPAF.

The article is divided into three parts reflecting the dichotomy of good and evil in the practice of TPF in ICA and how to expel the prevailing evils in the practice of TPF in ICA. The first part encompasses the benefits of TPF in ICA, the second part deals with the challenges that third party poses to ICA, and lastly how to address the issues which TPF presents in ICA. Followed by a conclusion and future outlook.

The Good Samaritan: Benefits of Third-Party Arbitration Funding

The TP funder is the good Samaritan, who assists the party in need of financial or legal aid to conduct an arbitration proceeding. TPAF offers a few primary benefits which make it an alluring option for the parties to an arbitration proceeding. Generally, the foremost advantage of TPF is that it increases access to justice for the parties who cannot otherwise afford to maintain a meritorious claim (Khouri *et al.*, 2011; Santos, 2017; Messina, 2019). The costs surrounding an international commercial arbitration tend to increase and the argument that arbitration is a less expensive alternative to litigation does not necessarily stand true (Coomber, 2017; Trusz, 2013). The various fees associated with arbitration proceedings places a substantial burden on the parties, such as administrative fees of the arbitral institution, attorney fee, expert evidence fees, and, last but not least, the compensation of the arbitrators appointed to resolve the dispute. These escalated costs can consequently erect a financial obstacle and act as catalysts aggravating impediments to access arbitration. TPF allows the party to an international commercial arbitration involving multi-million dollar claims to shift the burden of cost and the risk of loss upon the TP funder. In pertinence to it, TPF especially appeals to two types of parties: first, the impecunious party, and second, the financially stable entities.

On the face of it, TPAF might assist impecunious or disadvantaged parties to an arbitration agreement. There is no doubt that when disputants are in a balanced situation, in terms of the size and sum at risk, and the availability of funds in the hands of the disputants, a battle of equals can take place. On the flip side, the battle might become a David-and-Goliath fight when one party is disadvantaged due to a dearth of resources and funds in contrast to the opponent and it is imperative for the former party to initiate arbitral proceedings to redeem his right (Goeler, 2016). Considering such a setting, despite a concrete case, a dearth of monies might prevent the disadvantaged party to access arbitration (Bogart, 2013). Thus, in such cases, TPF allows the disadvantaged party to level up and compete against his opponent, fostering access to justice. Analyzing funding arrangements in such situations it is axiomatic that TPF arrangement promotes access to justice because it is better to share the pie with the funder than to have no pie at all, that is, it is beneficial for the impecunious party to recover some part of the damages than to recover nothing at all.

The funder who invests his money in the claim of the funded party does so only after doing his due diligence on the ability of the claim to reap the benefit the funder seeks. The funder in order to ensure a likable outcome provides quality legal assistance, expert advice having the required skill sets and experience which the disadvantaged party would not be able to obtain themselves. Getting access to such legal assistance, expert opinion, and experienced arbitrators levels the playing field and increases the odds of a favorable case (Yeoh, 2016).

TPF may also be beneficial for entities with sufficient resources opting for alternative options to fund their arbitration proceeding (Goeler, 2016). Entities having sufficient business and cash flows intend to reasonably manage the risk involved in arbitration of high magnitude by seeking external financial support. In fact, the claimant might be ambivalent to allocate funds for initiating and conducting the arbitral proceeding. It is since the arbitral proceeding is a highly uncertain event and might turn out to be a prolonged struggle to recover alleged damages. Taking the assistance of TPF allows the claimant to allocate the risk and burden of high costs relating to the claim sought in the arbitral proceeding upon the funder. Thus, TPF is an alluring option for an established business due to its risk management and financial support abilities.

A Bad Omen:

Challenges Posed by Third-Party Arbitration Funding

Upon the deconstruction of the TPF arrangement, it comes to light that a third person who is not a signatory to the arbitration agreement acquires an interest in the outcome of the arbitration proceeding. Such interest in the arbitral claim by an external entity is associated with certain risks that TPF brings to ICA (Yeoh, 2016; Santos, 2017; Messina, 2019). The funder does not invest out of love or affection or as a philanthropist but for the generation of wealth, as that is the way the cookie crumbles. The funder entering into an agreement with the party to an arbitration agreement is considered a bad omen for the arbitral proceeding and the enforceability of the award due to the inherent risks which are associated with TPF arrangements. The major challenges that TPF poses to the arbitral process and the recognition and enforcement of the awards are important for the clients and their lawyers to understand to facilitate an informed decision and whether to enter into such TPF agreements at all. The major challenges posed by TPF in ICA can be broadly classified into five categories: a) unfair terms and dominance over the claim; b) conflict of interest; c) frivolous claims and discourage settlements; d) disclosure of TPF agreements and the concern of costs; e) the concern of confidentiality and breach of privilege.

Unfair Terms and Dominance Over the claim

Before the funder enters into a TPF arrangement with the claimant, the funder conducts due diligence on the claim, and if found suitable for investment, negotiates with

the claimant the terms of the TPF agreement. Due to the funder's financial advantage, the funder has substantial leverage in the negotiation process and could consequently overexercise its leverage by adopting unfair terms in the TPF agreement, such as appropriating disproportionate share, seeking control over the arbitral proceeding at various stages, recommending the counsel and others (Yeoh, 2016; Santos, 2017).

As it is correctly pointed out in the famous proverb, 'he who pays the piper calls the tune', something very similar might be seen in a TPF arrangement between the funder and the claimant. The interest of the funder rests on the success of the arbitral proceeding, there might be temptations for the funder to control the proceeding and impose its view at different stages of the proceeding (Bertrand, 2011). The given situation is exacerbated by the role of the funder in recommending the counsel for selection, who will represent the claimant in the arbitration proceeding (Yeoh, 2016). Moreover, the claimant's lawyer may side with the funder in influencing the claimant's decisions because of the possibility of recurrent business from the funder (Yeoh, 2016).

There is also a possibility that the funder might assist the claimant in the selection of the arbitrator, though it is not axiomatic that such assistance will be improperly exercised as the interest of the funder rests upon a favorable outcome of the dispute. Furthermore, such assistance is welcomed if the claimant is inexperienced in the procedure of appointment; the claimant may actually benefit from such conduct. However, the disclosure of involvement of the TP funder by the claimant or the appointed arbitrator still exists in such cases (Beechey, 2019).

Conflict of Interest

It is a globally recognized principle of commercial arbitration that the arbitrators appointed to adjudicate the dispute between the disputants must be independent and impartial (United Nations Commissions on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration, 1985). The principle of independence and impartiality is also reflected in all institutional rules (See LCIA Rules, Art. 10 (1) and (3); ICC Rules 2012, Art. 14 (1); UNCITRAL Rules 2010, Art. 12; SIAC Rules 2010, Art. 11 (1); HKIAC Rules, Art. 11 (4)), moreover, the institutional rules require the arbitrator to disclose all grounds that could reasonably be construed as grounds for disqualification. The International Bar Association (IBA) on the 22nd of May 2014, issued color-coded guidelines for determining the existence of justifiable doubts as to the independence and impartiality of an arbitrator, though not binding but can be used around the world (International Bar Association, 2014).

Let us consider a hypothetical yet plausible situation; a party 'Mr. X' appoints an international acclaimed arbitrator 'Mr. Y' for resolution of the dispute. Mr. Y is also the attorney for the company 'Co. Z' and represents Co. Z in several of its legal recourses. Co. Z is funding the claim of Mr. X, whereas Mr. Y who is the attorney of Co. Z is acting

as an arbitrator. There is clearly a conflict of interest on part of Mr. Y, who is serving as an attorney for Co. Z, as well as the arbitrator in a dispute in which Co. Z has a direct financial interest. The opponent upon the knowledge of such a conflict of interest can challenge the appointment of the arbitrator, causing a delay in the resolution of the dispute.

Similar circumstances can be born in different settings, such as an attorney from the same law firm that represents the funded party as well as the funder acts as an arbitrator in an arbitral proceeding funded by the same funder, such circumstances can lead to a slippery slope for the arbitral proceeding by calling into question the independence and impartiality of the arbitrator and consequently jeopardizing the entire arbitral process (Yeoh, 2016).

The consequences of a conflict of interest between the party or arbitrator and the funder can put the efficiency of ICA at risk. Conflict of interest can lead to challenging the composition of the arbitral tribunal on the ground of a lack of independence and impartiality. That will cause undue delay and may even increase the cost of the arbitration. Moreover, the award by such an arbitrator can even be set aside under Article V(2) of the New York Convention.

Frivolous Claims and Discourage Settlements

In contrast to the benefit of the TPF arrangement of access to justice, the TPF arrangement also opens the flood gates to frivolous claims (Clanchy, 2017). When a party has the opportunity to fund its dispute — which otherwise he would not have pursued — it encourages trivial claims. Having said that, the argument that funding instigates frivolous claims lacks merit as the funder acts as a gatekeeper filtering frivolous claims because it is the money of the funder which is at risk and the funder would rather discard such frivolous claims than encourage them. Moreover, Santos in her work (2017) reflected that on average only 5 to 10 percent of all cases are finally funded.

Further, it can be argued that TPF discourages possible settlement of the claim. It is due to the shift in the financial risk concerning the claim to the funder, and thus the funded party becomes disinterested in a settlement. That being said, in practice it illuminates just the opposite.

As the popular adage states, time is money. It is actually in the interest of the funder to settle the dispute fast, in order to claim its interest in the dispute than to wait for a long and unpredictable outcome of the proceeding. The risk of non-enforceability of the awards reinforces the swift settlement of the claim by the funder. Consequently, in a funding arrangement settlement of the dispute is encouraged rather than discouraged. Though a more important question appears at this junction, that is, what appears to be a 'swift settlement' in view of the funder might not always be considered an 'acceptable

settlement' by the funded party, reflecting the adverse control of the funder of the claim specifically regarding the final say on the settlement (Khouri *et al.*, 2011; Santos, 2017).

Disclosure of Third-Party Funding Agreements and the Concern of Costs

The major concern that surfaces in a funded arbitral proceeding is the lack of knowledge regarding the proceeding being funded by an external third party due to which the issue of conflict of interest might arise. One of the fundamental principles of arbitration is the independence and impartiality of the arbitral tribunal and upon the involvement of the funder, this principle is at risk of being jeopardized. Moreover, there exist concerns regarding the solvency of the funded party and its ability to pay costs or award passed against it. Disclosure of TPF arrangements to the tribunal or to the opponent is not an issue in itself but forms a substantial part of the issue of the efficacy of the arbitral proceeding and its outcome, in terms of, whether the arbitral tribunal has the power to direct the parties to disclose the existence of a TPF agreement and whether the tribunal has the power to order security for costs in a third-party funded arbitral proceeding against the funder?

Primarily the question of when a TPF agreement can be disclosed to a stranger or third-party rests upon the terms consented by the funded-party and the funder of a TPAF agreement (Khouri *et al.*, 2011; Santos, 2017). Until the advent of the International Chamber of Commerce Arbitration Rules, 2021, there exist no proper rules of the premier arbitration institutes providing for disclosure of funding arrangements by the parties. However, the non-funded party may get to know about the funding during the arbitral proceeding, either during the due-diligence stage, the case management stage, the negotiation stage, or at any later stage of the proceeding.

The arbitral tribunal possesses the power to grant security for cost, the tribunal exercises its discretion in deciding when to impose such orders as there exists no uniform rule promulgated in this regard to this day (Brekoulakis *et al.*, 2017). The tribunal exercises its power with caution and after doing its due diligence on the financial condition of the party against whom it intends to pass such security for costs order. If the tribunal is of the opinion that the party to the proceeding would be unable to pay the substantial prospective award monies if passed against such party, the burden of proving the contrary lies on such party and the tribunal may pass an order for security for costs.

With respect to TPF arrangement, a typical scenario may arise; an impecunious party enters into a funding agreement with a giant funding firm to financially support its arbitral claim with a provision that the funder is not liable for adverse cost orders. In such an instance, it seems that the impecunious party will be unable to remit the adverse cost order justifying the order of the tribunal for security for costs. Due to such circumstances, it is generally asserted, that to protect the respondent's right, the mere presence of a funder should justify an order of security for costs (Scherer, 2013).

However, such an argument is not always meritorious, as it is well known that not only do impecunious parties enter into a funding agreement but is also well sought after by solvent parties as a funding alternative. As per the draft report of the International Council for Commercial Arbitration and Queens Mary University London Task Force on TPF (Brekoulakis *et al.*, 2017), “third-party funding is increasingly used by large, solvent companies that simply wish to share risk and maintain liquidity [...]. It is thus suggested that applications for security for costs [...] should be determined irrespective of any funding arrangement, and on the basis of impecuniousness” (p. 180).

Moreover, once all the substantial questions pertaining to the disputes are dealt with by the tribunal the question of costs subsequently occupies the mind of the tribunal. On whom to impose the costs? Generally, the rule is that the cost follows the event unless for special reasons the tribunal decides otherwise. That means the unsuccessful party to the arbitral proceedings pays the cost of the proceedings of the successful party unless the circumstances of the case speak otherwise. In this context, the major discourse is regarding, whether the mere existence of TPF should be a considerable factor in determining and computing the costs in an arbitration proceeding?

In a leading English case of *Essar v. Norscot* (2016, EWHC 2361, Comm), the English court directed Essar to pay the costs including the amount Norscot owed to his funder as per the funding agreement. Although, *Essar v. Norscot* case is a peculiar dictum resulting due to the unacceptable conduct of Essar. The issue of ownership of the claim from the perspective of the funder persists and raises impediments in ICA.

The Concern of Confidentiality and Breach of Privilege

Confidentiality is one of the tenets of international commercial arbitration. Confidentiality in arbitration — operates with some exceptions — ensures that the documents, communications, and information pertaining to the arbitral proceeding are kept private between the parties to the arbitration and the tribunal and thus shall not be disclosed to any third person. The party seeking funding in an arbitral proceeding when submitting the case to any potential and prospective funder might jeopardize the confidentiality of the arbitral process (Goeler, 2016). As the funder would only be interested in investing in the arbitral proceeding after successfully vetting the claim — including the arbitration clause or agreement, the composition of the tribunal, the law applicable, the seat of arbitration, the contract itself and any other documents relating to the claim — and concluding such claim to be an investment-worthy claim. Such a process of due diligence violates the tenet of confidentiality of arbitration proceedings due to an analogy that the funder is not a signatory to the arbitration agreement, consequently not bound by the confidentiality clause (if any) between the parties to the arbitration agreement but still provided access to documents and other information pertaining to the arbitration. Such disclosure of information to the funder may lead to horrendous repercussions for

the non-funded party as the funder may utilize the acquired information to the detriment of the non-funded party in any other legal face-off between them (Goeler, 2016).

Another concern that takes birth due to the disclosure of confidential information pertaining to the arbitral proceeding to the funder is the breach of attorney-client privilege. The funder upon investing in the claim gets skin in the game and consequently, the funded party may require to disclose certain privileged communication to the funder (Messina, 2019) There may be communication between the funder and the funded party, and/or the funded party's lawyer regarding the claim which blurs the lines of attorney-client privilege under the professional code of conduct. The funder might receive from the funded party certain privileged documents prepared by the funded party lawyer diluting the sacred attorney-client privilege.

Exorcism of Third-party Arbitration Funding Challenges: How Best Addressed

Funding arbitral proceeding is not scarce nowadays in the global market of budding financial firms and stupendous investment companies looking to expand their portfolio by diversifying their investment. Investment in arbitration proceedings can be lucrative subject to the funder having conducted the due diligence of the claim appropriately. The claimant might be seeking funding either to avert legal expenditure on the company's account or it does not have sufficient resources to sustain a legal proceeding without jeopardizing its assets. At a preliminary stage, apart from the due diligence conducted by the funder of the claim, there is nothing that prevents a party from funding its claim. The downside of utilizing TPF in ICA arises either during the arbitral proceeding or at the stage of enforcement of the award. Such a situation is due to the lack of regulations on TPAF which results in multifarious challenges in the arbitral process as well as in the execution of the arbitral award. The exorcism of the challenges posed by TPF in ICA is imperative to ensure access to justice for the impecunious parties and the convenience of mitigating the risks involved in maintaining an expensive legal proceeding for financially sufficient parties. The following questions are drawn up in order to address the challenges posed by TPF in ICA effectively.

How to restrict the funder from using its dominant position as leverage for having unfair terms in the funding agreement with the claimant?

Due to the asymmetric bargaining structure of the TPF agreements, there is a high risk of exploitation of the party seeking funding by the funder. The funder may strong-arm the claimant into an unfair agreement, seeking 50% or more than 50% of the award in the event of success and escaping scot-free in the event of defeat. Nevertheless, if a pragmatic approach is taken, such lopsided TPF agreements manifest only in worst-case scenarios of getting an award for less amount because the profits are based on a

fixed sum and not on the percentage of the award (Yeoh, 2016). In contrast, there are the best-case scenario TPF agreement terms, where the funder would be entitled to only 5% to 6% of the award (Parloff, 2012). More commonly, the funder would seek somewhere between the range of 20% to 40% of the award (Veljanovski, 2011). Due to the fact, that the funders also rely on the goodwill and constant cooperation of the funded party (Khouri *et al.*, 2011), as well as, conscious of the downside of acquiring more than half of the award value, which brings along with it demotivated and unconcerned party.

In *Dymocks Franchise Systems (NSW) Ltd v. Todd* (2004, 1 WLR 2807 pp. 2815) the court held that “Where, however, the non-party not merely funds the proceedings but substantially also controls or at any rate is to benefit from them, justice will ordinarily require that, if the proceedings fail, he will pay the successful party’s costs”. In *Arkin v. Borchard Lines Ltd & Ors* (2005, EWCA Civ 655) the court held that if “a funding agreement that falls foul of the policy considerations that render an agreement champertous. A funder who enters into such an agreement will be likely to render himself liable for the opposing party’s costs without limit should the claim fail”. Moreover, in *Excalibur Ventures v. Texas Keystone & Ors.* (2016, EWCA Civ 1141), the United Kingdom court of appeal upheld the order of adverse cost on the funders — even though the funders were not a party to the appeal — on the ground of the ‘follow the fortunes’ approach. The United Kingdom judicial approach is unambitious, an excessive financial interest or substantial control of the conduct of a case or dispute results in roping the funder in cost orders against the funded party. Thus, the funder shall exercise adequate control over the claim, including due diligence and monitoring the case once initiated. However, unlike the national courts, the arbitral tribunals do not have the authority to impose costs on third parties including funders (Ramesh, 2020). But if a funder exercises complete control of the conduct of the arbitration proceeding it would fall foul of the public considerations, consequently rendering the arbitration funding agreement champertous thus allowing the court to intervene and impose costs on the funders.

The party seeking funding shall at all times be aware of its rights while entering into a funding agreement. The risk of unfair terms can be minimized and mitigated by seeking legal advice on the arbitration funding agreement from an attorney who practices in the area of TPF and making sure that the contract is diligently drafted and is clear of all ambiguities. Moreover, the party seeking funding shall explore the market for potential prospective third-party funders, it indirectly safeguards the party from signing an unfavorable arbitration funding agreement, as well as provides them with more options and even leverage to negotiate better terms. Further, the question of unfair terms can be answered by bringing in some regulations on TPAF or by strengthening the self-regulated model of TPAF.

How to avert the conflict of interest of the arbitrator(s) in a funded arbitration proceeding?

As already pointed out herein above (under conflict of interest), the importance of independence and impartiality of an arbitrator is securing the outcome of arbitral proceedings. The involvement of a TP funder undoubtedly affects the integrity of arbitral proceedings, and it is precisely due to this that the fabric of international arbitration shall be kept well-knit and spotless by elimination of any conflict of interest of the arbitrator(s) with the funder or the funded party.

In response to the various questions raised by the practitioners as well as the academicians pertaining to the conflict of interests of the arbitrator(s) in a funded arbitral proceeding, the IBA in its 2014 guidelines on conflicts of interest in international arbitration included a third-party funder within the identity of a party to the arbitration proceeding (International Bar Association, r6b (2014)). The IBA guidelines first state that the arbitrator shall be independent and impartial throughout the proceeding (International Bar Association, r1, 2014) if the arbitrator has any reason to believe that there are any conflicts of interest between him or her and the party to the proceeding, the arbitrator shall decline to accept an appointment (International Bar Association, r2a, 2014), but if the arbitrator is not of the opinion of any conflicts of interest and accepts the appointment, he shall disclose any or all facts or circumstance which might raise a justifiable doubt as to his or her independence and impartiality in the mind of the parties to the proceeding (International Bar Association, r3a, 2014). Lastly, the arbitrator has a duty to conduct a reasonable inquiry to identify any possible conflicts of interest or of any facts or circumstances which may jeopardize his ability to act independently and impartially in the eyes of the parties (International Bar Association, r7d, 2014). As per the prevailing market practice, whenever any partner or an associate of a large legal firm takes up the role of an arbitrator, a conflict-mail is circulated in the firm requiring the members of the firm to disclose if they are representing or currently in business with either of the party to the arbitral proceeding, such internal practice of the firms helps them avoid conflicts of interest beforehand.

Thus, by reading IBA rules together, the inference is drawn that if one of the parties to the arbitration proceeding is being funded by a legal entity or a third person having a financial interest in the outcome of the arbitration proceeding and the arbitrator is aware of the involvement of the funder due to the fact, the arbitrator is a partner/associate of the legal firm representing the funder in its other matters or otherwise representation of like nature, the arbitrator shall not accept the appointment. However, if the arbitrator is aware of the involvement of a represented funder in the arbitration proceeding but is of the opinion that such representation does not affect his or her ability to act independently and impartially, the arbitrator shall disclose such facts and circumstances to the parties at the earliest possible opportunity. Such early disclosure will ensure the

integrity of the arbitral process and will avert objections at a later stage regarding any conflicts of interest of the arbitrator(s) with the funded party or the funder.

Disclosure of the TPF agreement may help avoid the harsh repercussions while maintaining the independence and impartiality of the arbitrator consequently avoiding delays and the inconvenience of finding a replacement arbitrator (Yeoh, 2016). Beechey (2019) in his work is also inclined toward disclosure of the relationship between the funder and the arbitrator at the stage of appointment of the arbitrator or during the course to avoid objections pertaining to the independence and impartiality of the arbitrator; however, he also raises the issue of practicality over theoretical articulation. Goldstein (2011), as well as Trusz (2013), have proposed that TPF agreements should be disclosed to eliminate the possibility of occurrence or perception of conflicts of interest. Stoyanov and Owczarek (2015) favor disclosure of funding agreements as a starting point to avoid conflicts of interest and point toward express disclosure requirements. Keeping in mind the IBA guidelines as well as the opinions of the various authors expressed herein above it is safe to induce the assertion that the arbitrator should at the earliest possible opportunity disclose the existence of his relationship with any third-party or legal entity that might be interested in the outcome of the arbitral proceedings in order to avert any conflicts of interest of the arbitrator in a funded arbitration proceeding.

How to ensure that the funder does not have the final say in respect of a settlement that is not acceptable to the funded party?

The remedy to the issue of who has the final say in respect of a settlement is a no-brainer, the TPF agreement shall include a clause vesting the party to the arbitration with the right to make the last and final decision in respect to any possible settlement to the dispute. However, with the leverage that the funder possesses in the negotiation stage, it is almost next to impossible to make that bargain. It might only happen when the party seeking funding has an immaculate claim and a plate full of funders to select from for funding. Khouri *et al.* (2011) and Santos (2017) are also of the opinion that conflicts pertaining to whether or not to settle can be addressed by the parties beforehand in the funding agreement. The next best possible remedy would be to have a reference clause. That is to say, if the funder and the funded party reach an impasse regarding the question of settlement, the question shall be decided by a neutral third person (who shall be an attorney not related to both, the funder and the funded party) and its decision shall be final. Such a reference clause would also eliminate the possibility raised by Khouri *et al.* (2011) of the funded party's lawyer acting in favor of the funder due to the incentive of repeat business. The true solution lies in the agreement between the funder and the funded party.

When should the existence of a funder be disclosed to the arbitral tribunal and the opposite party?

Having shed sufficient light on the challenges posed by TPF in ICA, it is imperative to address the elephant in the room, that is, the issue of disclosure by the funded party of TPF agreement to the tribunal as well as the opposite party. There arise multifarious questions pertaining to the disclosure of TPF agreements — raised herein above under the sub-heading ‘disclosure of third-party funding agreements and the concern of costs’ — that being said, the scope of this part of the article is limited to only the timing of disclosure. The study of the issue of disclosure of TPF agreements in ICA needs a systematic investigation. In a funded arbitral proceeding, the disclosure of TPF agreement can be done piecemeal. The existence of a funder might come to light at the stage of appointment of the arbitrator, whereas the arbitrator was aware of funding and disclosed it to avoid conflicts of interest. However, if the arbitrator was in dark regarding the existence of funding, the funding can be disclosed at any later stage of the arbitral proceeding either impliedly through the conduct of the funded party, or through an express disclosure by the funded party. Moreover, if the tribunal and the other party suspect that there exists a funder due to the conduct of the funded party, the tribunal or the other party can seek disclosure of the funding agreement. Such implied or express disclosure by the funded party affects the decisions of the court regarding the security for costs orders and/or the final costs awarded. Furthermore, another circumstance can arise where one of the parties who was not funded at the time of the commencement of the arbitral proceeding but later secured TPF. Be that as it may, the burning question that needs to be addressed is when should the existence of a funder be disclosed to the arbitral tribunal and the opposite party?

The IBA in its guidelines on conflicts of interests in international arbitration provides that the party shall at its own initiative and at the earliest possible opportunity intimate the arbitral tribunal, the other parties, and the arbitral institution or the appointing authority (if any), of any relationship whether direct or indirect, between the arbitrator(s) and the party or entity having a direct financial interest in the award to be rendered in the arbitral proceeding, and the party shall perform reasonable inquiries, and provide any relevant information regarding such relationship available to the party (International Bar Association, r7a & r7c, 2014). A person or body corporate providing funding for the arbitral proceeding is said to be an entity having a direct financial interest in the prospective award (International Bar Association, Explanation r7a, 2014). These rules read together suggest that the funded party has a duty or is under an obligation to disclose to the arbitral tribunal and the other party the presence of a funder in the arbitration to ensure the integrity and efficacy of ICA. Nevertheless, these rules of IBA are not binding but merely persuasive.

Yeoh (2016) suggests that merely disclosure of the presence of TPF, without elaborating on the details of the TPF agreement, at the earliest notice would suffice to protect the integrity of the arbitration. As per the Queen Mary University of London and White & Case LLP, 2015 International Arbitration Survey on Improvements and Innovations in International Arbitration, 76% of the respondents were in support of disclosure of the use of TPAF (Queen Mary University of London and White & Case LLP, (2015)). Beechey (2019) similarly asserts that the funded party is required to make a disclosure of the TPF agreement at the earliest possible juncture. While Stoyanov and Owczarek (2015) argue that the TPF agreement should be disclosed as soon as the funding arrangement is entered into with the funder. These authors weigh heavily in favor of a disclosure regime of TPF where the funded party should disclose the existence of an arbitration funding agreement at the earliest possible opportunity. The earliest possible opportunity should be the stage of appointment of the arbitrator(s) or before the framing of the issues in order to avoid any perceived conflicts of issues and clarify the tribunal's concerns regarding costs-related orders. In absence of any mandatory disclosure regulations, the funded party is required to disclose voluntarily as per the terms of the funding agreements (Messina, 2019), but Stoyanov and Owczarek (2015) argue that in regard to the potential consequences of disclosure upon an arbitral claim, voluntary disclosure would be unlikely in the absence of express regulations. In contrast to such an argument, Fuchs and Richman (2020) assert that till the time domestic laws come into place, voluntary disclosure of TPF agreements may become more common in the near future to pre-empt any substantial enforcement issues. Disclosure of arbitration funding at the earliest possible opportunity by the funded party should be mandatory rather than discretionary.

Conclusion and Future Outlook

The trend of funding arbitration proceedings in ICA has come to stay for good and not to get lost in oblivion. The practice of funding arbitral proceedings in ICA has done some good, some bad, and some ugly. TPF is a means to mitigate the risk for a few or access to justice for others. It is beyond any doubt that TPAF poses challenges in ICA, however, these challenges are not insurmountable and can be addressed effectively through appropriate regulations, several attempts to address such challenges are already in place. Jurisdictions like Singapore and Hong Kong have taken the approach to expressly regulate TPAF, whereas the United Kingdom, France, and Switzerland foster a self-regulation approach. There exists no uniform practice for regulating TPAF in ICA globally. The need of the hour is to at least have a global or majority consensus in respect of whether there should be regulations or not to regulate TPAF in ICA.

Khouri *et al.* (2011) conclude their work by pointing toward the challenge of striking the right balance between the interest of the claimants and the funder so as to indicate

the mutuality of the risks and benefits; moreover, TPF in ICA should “be positively nurtured, not constrained”. By the statement “be positively nurtured, not constrained” the authors are reflecting on their inclination toward a regulatory regime rather than blanket restriction. Stoyanov and Owczarek (2015) found that it is expedient to atone the existing framework and there is a need to incorporate a more specific and express system of regulations. Yeoh (2016) unequivocally supports the regulation of TPF to keep a firm check on its potential pitfalls. Santos (2017) found TPF to be an important funding alternative and only a sheep in wolf’s clothing as when TPF would be addressed through regulations, all challenges posed by TPF will be neutralized. Messina (2019) points toward the need to regulate the interactions between all stakeholders involved in TPG and develop some type of standardized approach wherein all actors of TPF understand their respective roles and duties. Messina (2019) prefers a broader understanding of the TPF issues and harnessing the power of dynamic feedback from scholars, practitioners, funders, arbitrators, and the parties to arbitration to effectively address the practice of TPF in international arbitration. Lastly, Fuchs and Richman (2020) in their work conclude that express national laws should be implemented regarding the regulatory framework of TPAF in ICA. A majority consensus thus exists among scholars and jurists that TPAF should be regulated through some regulations or rules, though the degree and intensity of such regulations may vary from place to place.

The UNCITRAL Model Law on International Commercial Arbitration, 1985 make endeavours for a worldwide common *Lex-arbitri* and assist the states to modernize their arbitration laws. The Model law should be amended to include a new chapter regarding the recognition and regulation of TPAF in ICA. In furtherance of such amendment to the Model Law, the UNCITRAL shall set up a third-party international commercial arbitration funding working committee. The working committee shall provide regulations for TPAF from three perspectives, that is, the conduct of the funder, the funded party, as well as the arbitral tribunal of a funded arbitration.

References

1. Bogart, C. (2013). In B. M. Cremades and A. Dimolitsa (Eds.), *Third-party funding in international arbitration* (pp. 50–56). International Chamber of Commerce.
2. Bertrand, E. (2011). The brave new world of arbitration: Third-party funding. *SA Bulletin*, 29, 607–610.
3. Beechey, J. (2019) The pandora’s box of third-party funding: Some practical suggestions for arbitrators in light of recent developments In J. E. Kalicki and M. A. Raouf (Eds.), *Evolution and Adaptation: The Future of International Arbitration* (pp. 558–586). International Council for Commercial Arbitration.
4. Brekoulakis, S., Park, W. W., & Rogers, C. A. (2017). Draft report for public discussion of the ICCA-Queen Mary task force on third-party funding in international arbitration. International Council for Commercial Arbitration.

5. Campbells Cash and Carry Pty Limited v. Fostif Pty Limited ((2006) HCA 41 para 68) Available at <https://jade.io/article/1499/>.
6. Cremades, Jr., B. M. (2011). Third-party litigation funding: Investing in arbitration. *Transnational Dispute Management*, 8(4), 1–41.
7. Clanchy, J. (2017). Rigorous steps short of champerty. *New Law Journal*, 167(7738). Available at <https://www.newlawjournal.co.uk/content/rigorous-steps-short-champerty/>.
8. Coomber, A. (2017). Access to justice in the 21st Century: A reality check. In Summer 2017 Harbour View – Access to justice (pp. 5–7). Harbour Litigation Funding.
9. Delaney, J. (2014, April 15). Mistakes to avoid when approaching third-party funders. *Global Arbitration Review*. Retrieved from <https://globalarbitrationreview.com/article/1033321/mistakes-to-avoid-when-approaching-third-party-funders/>.
10. Excalibur Ventures v. Texas Keystone & Ors. ([2016] EWCA Civ 1141).
11. Essar v. Norscot ([2016] EWHC 2361 (Comm)).
12. Fuchs, A., & Richman, L. (2020). The arbitration agreement and arbitrability, third-party funding in international arbitration: A comparative analysis. In C. Klausegger, P. Klein, F. Kremslehner, A. Petsche, N. Pitkowitz, I. Welser, G. Zeiler (Eds.), *Austrian yearbook on international arbitration* (pp. 73–100). Manz'sche Verlags und Universitätsbuchhandlung.
13. Giles v Thompson (1993) 2 W.L.R. 908. Available at https://harbourlitigationfunding.com/wp-content/uploads/2015/07/giles_v_thompson_ukhl_2_26_may_1993.pdf/.
14. Goeler, J. V. (2016). *Third-party funding in international arbitration and its impact on procedure*. Kluwer.
15. Goldstein, M. J. (2011). Should the real parties in interest have to stand up? Thoughts about a disclosure regime for third-party funding in international arbitration. *Transnational Dispute Management*, 8(4), 1–24.
16. International Bar Association. (2014). Guidelines on conflict of interest in international arbitration. Retrieved from <https://www.ibanet.org/resources#:~:text=The%20IBA%20Guidelines%20on%20Party,at%20obstructing%20the%20arbitration%20proceedings/>.
17. Khouri, S., Hurford, K., & Bowman, C. (2011). Third-party funding in international commercial and treaty arbitration – A panacea or a plague? A Discussion of the Risks and Benefits of Third-Party Funding. *Transnational Dispute Management*, 8(4), 1–14.
18. Messina, V. (2019). Third-party funding: The road to compatibility in international arbitration. *Brooklyn Journal of International Law*, 45(1), 433–461.
19. Nieuwveld, L. B., & Sahani, V. S. (2017). *Third-party funding in international arbitration*. Kluwer.
20. Parloff, R. (2012). *Speculating on injustice third-party funding of investment disputes*. Corporate Europe Observatory.
21. Queen Mary University of London, White & Case LLP. (2015) International arbitration survey: Improvements and innovations in international arbitration.

22. Ramesh, S. (2020). Third-party funding in international arbitration: Ownership of the claim, consequences for costs orders, and regulation. *Arbitration International*, 36(2), 1–21. DOI: <https://doi.org/10.1093/arbint/aiaa021/>.
23. Santos, D. C. (2017). Third-party funding in international commercial arbitration: A wolf in sheep's clothing?. *ASA Bulletin*, 35(4), 918–936.
24. Stoyanov, M., & Owczarek, O. (2015). Third-party funding in international arbitration: Is it time for some soft rules? *BCDR International Arbitration Review*, 2(1), 171–200.
25. Scherer M. C. (2013) Third-party funding: Towards mandatory disclosure of funding agreement? In B. M. Cremades and A. Dimolitsa (Eds.), *Third-party funding in international arbitration* (Chapter 8). International Chamber of Commerce.
26. Trusz, J. A. (2013). Full disclosure? Conflicts of interest arising from third-party funding in international commercial arbitration. *Georgetown Law Journal*, 101, 1649–1667.
27. United Nation Commission on International Trade Law. (1985, June 21). *UNCITRAL Model Law on International Commercial Arbitration*. UNCITRAL.
28. Unruh v Seeberger ([2007] 2 HKC 609)
29. Veljanovski, C. (2011). Third-party litigation funding in Europe. *Journal of Law, Economics & Policy*, 8, 405–424.
30. Winfield, P. H. (1919). Assignment of choses in action in relation to maintenance and champerty. *Law Quarterly Review*, 35, 143–162.
31. White & Case LLP. (2019). *2018 International Arbitration Survey: The Evolution of International Arbitration*. Queen Mary University of London.
32. Yeoh, D. (2016). Third-party funding in international arbitration: A slippery slope or levelling the playing field? *Journal of International Arbitration*, 33(1), 115–122.

Ethiopia: The Changing Aspects of the Ethio-Egypt Water Diplomacy — Key Drives, Challenges, and Prospects

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Abstract: Starting the inception of the 2010s, Ethiopia's relations with Egypt have been experiencing one of the deepest crises in the relationship of the two countries' history. Ethiopia, one of the upper riparian states of the Nile River not only theoretically challenged the exclusive veto power of Egypt over the Nile River but also practically start constructing one of Africa's largest hydropower dams on the Blue Nile since 2011. The challenging behavior of Ethiopia over the Nile River worried the long-standing regional hegemon, Egypt. Against this background, this paper aims to forward a new insight into how and why Ethiopia challenged the long-standing superior-subordinate Egypt-led order over the Nile River. Moreover, in its discussion, the paper tries to address key drives, challenges, and prospects of Ethiopia-Egypt water diplomacy. The paper also illustrates how and why the Ethio-Egypt water diplomacy strain becomes a cross-cut on the two nation's foreign policy matters. The paper has also attempted to understand how the superior-subordinate power duality approach works over the Nile River against the new balancer.

Keywords: Ethiopia, Egypt, Relation, Nile River, Challenges, Prospects.

Context

Starting in 2011, Ethiopia has been experiencing its deepest and most disquieted crisis with the Egypt-led order in the Northeast Africa region. The nationalistic approach of state leaders together with the commencement of the construction of The Grand Ethiopian Renaissance Dam (GERD) in a geopolitically unstable and hotspot region lays the ground for the unpleasant relations between the two nations. At the

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June 2020 Security Council virtual summit the Egyptian minister of foreign affairs, Sameh Shoukry, portrayed the construction of (GERD) as “A threat of potentially existential proportions... of over 100 million Egypt’s” (Daily News Egypt, 2020). At the same summit, the Ethiopian representative Ambassador Taye Atske Selassie respond with a similar language “For Ethiopia, accessing and utilizing its water resources is not a matter of choice, but of existential necessity” (Zane, 2020).

While politicians, scholars, and news outlets explain the success of Ethiopia in starting the construction of Africa’s ever-largest hydroelectric power project-argue that Ethiopia would never start the construction of the dam over the Blue Nile- had Egypt not been troubled by the 2011 Arab spring. Ahmed Noubi, owner of a sugar cane plantation, for instance, argued that “It was upsetting to see the last Ethiopian Prime Minister take advantage of the chaos in Egypt to push ahead with this project at a time he knew there could be no consultation with anyone in Cairo” (Wirtschafter, 2019).

Another time, in September 2019, the President of Egypt, Abdul Fattah Al-Sisi, said that “dams on the Nile would have never been built was it not for the impact of the 2011 uprising”, “urging Egyptians not to repeat the mistakes of the past” (Morsy and Alaa El-Din, 2019).

Although many politicians, policymakers, and intellectuals associate the official start of the construction of the GERD with the 2011 chaos in Egypt, their prophetic arguments that conceptualize the above explanation are misleading and deceitful for the following three reasons. First, history confirms that such kinds of arguments have fallacious predictability power. For instance, in the 1960s Ethiopia together with the United States Bureau of Reclamation (USBR) studied a hydropower project called ‘Border Dam’ at the same site where the GERD is directly being constructed. Conversely, it is apparent that during the time, Egypt was not in chaos. However, Ethiopia failed to implement the 1960s project on the Blue Nile because of internal problems and financial shortages. Second, such kind of portrayal and/or prophecy is stemmed from the conceptualization of the superior-subordinate duality hierarchical order between Ethiopia and Egypt to retain the hegemonic position of Egypt on the Nile River. Finally, such kind of conceptualization is largely charged simply because of the construction of Ethiopia as an ‘inferior other’ against the ‘superior’ Egypt on the issue of the Nile.

So, this paper primarily asks the following questions:

- Why the discourse of superior-subordinate duality conceptualization over the Nile River challenged and Ethiopia start a mega-dam on the Blue Nile that tests the interests of Egypt? And how can this difference in the relations between the two countries elucidate?
- How and why the Ethio-Egypt water diplomacy issue becomes a cross-cut on the two nation’s foreign policy matters?
- What would be the possible prospect scenario for the Ethio-Egypt water diplomacy?

To give a general answer to the above questions the paper is divided into four sections. The first section of the paper tries to explain the drives for the contest between Ethiopia and Kenya. Additionally, the first section of the paper addresses the reason why the superior-subordinate water order duality crisis between Ethiopia and Egypt is unique and worth studying. The second section of the paper addresses the potential reasons for the shift of the traditional line in Ethiopia and Egypt's water diplomacy. In abstraction, this section tries to address the reasons that enabled Ethiopia to challenge and deconstruct the superior-subordinate Egypt-led order over the Nile River. The third section of the paper focuses on illustrating the main challenges of the changing aspects of the Ethio-Egypt water diplomacy. Along discussing the main challenges for the two nations changing realities on water diplomacy, the third section emphasizes issues such as (i) the geopolitical design of the region together with overseas actor-based justifications; (ii) the state-level power-reconfiguration trajectory, and; (iii) system structure (i.e., from the point of the Northeast Africa regional balance of power reconfiguration). The last section of the paper focuses on the prospects of the Ethiopia-Egypt water diplomacy

Briefing the Drives for the Contest

The foundation for the superior-subordinate duality order between Egypt and the remaining upstream Nile riparian states including Ethiopia was laid several decades ago during the colonial era, in 1929 (Salman, 2013, p. 18). The 1929 Anglo-Egypt colonial accord which was revised in 1959 once again exclude Ethiopia which contributes 86% of the Nile water and give veto power to Egypt which contributes 0% of the water of the Nile River. Subsequently, Ethiopia several times attempted to challenge the 'win-lose' superior-subordinate duality order on the Nile River. But it was only at the inception of the 2010s that the plan to break the cycle of the superior-subordinate duality order over the Nile River came to materialization. It is possible to hypothesize the reason for the changing nature of the status quo of the superior-subordinate hierarchical order between Ethiopia and Egypt over the Nile River is because of the following two simple reasons. First, the relative peace and economic development in Ethiopia in the 2000s contributed to the changing dynamics of the superior-subordinate hierarchical order over the Nile issue. The second reason is because of the progressive and ambitious nature of the Ethiopian leadership during the time. While explaining the "challenging behaviors of subordinates" Ali Balci stated that "The greater the improvement in material capacities, the greater the likelihood that subordinates will challenge". Ali also mentioned that "Leaders with a grandiose vision are more likely to challenge" (2019, 16).

To maintain the status quo of the superior-subordinate duality over the issue of the Nile River Egypt has used to use the policy of destabilization, isolation, and colonial legal accords as a tool. This is done intentionally with the plan to maintain Ethiopia as a subordinate 'other' on the issue of the Nile River. To strengthen the rhetoric fodder of Ethiopia's subordinate position on the issue of the Nile River, Egypt has used to use

Article III of May 15, 1902, colonial agreement between Ethiopia and Great Britain (as a colonial master of Sudan) as a springboard. Article III of the 1902 accord reads that:

His Majesty the Emperor Menelik II, king of kings of Ethiopia engages himself towards the Government of His Britannic majesty not to construct, or allow to be constructed any work across the Blue Nile, Lake Taana, or the Sobat which would arrest the flow of their water into the Nile except in agreement with His Britannic Majesty and the Government of the Sudan (Ethiopian National Archive and Library Agency (ENALA, 1902, 17-2-268-02A)).

However, presenting the 1902 colonial agreement to maintain and assert the status quo of the superior-subordinate duality order on the issue of the Nile controversy is wrong for two simple reasons. First, the agreement was signed by the British representing Sudan but not Egypt. So, Egypt is using the 1902 colonial accord simply to further conceptualize its superior or veto power rhetoric fodder on the issue of Nile over Ethiopia in particular and the rest of upper riparian states at large. Second, Article III of the 1902 frontier accord remarks about ‘arresting’ the flow of the River. But the new Renaissance Dam under construction by Ethiopia is not planned to ‘arrest’ the flow of the Blue Nile. Rather the water generates electricity and continues its flow without any arrest or interruption. Meaning, that hydroelectric energy production does not affect or interrupt the flow of water. So, why Egypt has time and again oppose the construction of a hydroelectric dam over the Blue Nile? The answer is simple as that the Egyptians are wholehearted to maintain the superior-subordinate duality order over the Nile through ‘homogenizing’ any activity on the River as an ‘existential’ threat for Egypt. Second, the completion of the hydroelectric megaproject like GERD inevitably will challenge the existing order and hegemonic alignment over the Nile issue in particular and the Northeast African regional politics in general. So, Egypt’s strong opposition is stemmed to maintain the hierarchical regional prevailing order and regional hegemonic position of Northeast Africa, which is Egypt in our case.

In the 1950s and 1960s, Ethiopia expressed its objection towards the hierarchical superior-subordinate duality order between Egypt and Ethiopia on the issue of the Nile River. For instance, in 1958 Emperor Haileseilase I presented a request to participate in the water negotiation between Egypt and Sudan. But the Cairo-Khartoum front rejected the request of Addis Ababa. It was in response to this experience that the Blue Nile master plan study project was started in 1958 by the collaboration of the UNBR and Ethiopia. Finally, the study of the Blue Nile master plan project (1958–1964) proposed the construction of four high dams along the Blue Nile including the ‘Border Dam’, where exactly located at the same place as the GERD. The Blue Nile master plan project was the beginning of the challenge for the hierarchy of the superior-subordinate duality order between Egypt and Ethiopia on the issue of the Nile. Because the proposal of the Blue Nile master plan project yields fruit after five decades on July 22, 2020, in which

Ethiopia declared the successful filling of the first phase of its dam on the Blue Nile. The Nobel Peace laureate Ethiopia's Prime Minister, Abiy Ahmed, also said "The completion of the first round of filling is a historic moment that showcases Ethiopians' commitment to the renaissance of our country" (Al Jazeera, 2020).

On the other hand, to maintain the hierarchy of the superior-subordinate duality order over the issue of Nile against Ethiopia, the Egyptian-led order provides different kinds of benefits to internal and neighboring hostile states against Ethiopia. The aid to opposition groups to destabilize Ethiopia includes- military or economic aid, political support whenever necessary, and preaching respected status in the Middle East using its political acceptance in the region. Ethiopia has time and again accused Egypt's destabilization activity against its national security. Accordingly, while the crisis of Ethiopia and Egypt relations grow deeper, the destabilization efforts of Egypt against Ethiopia have dramatically increased. For instance, in 2013 the Egyptian political elites caught on a live TV program plotting how to attack the GERD and destabilize Ethiopia unaware the meeting has under live transmission. The meeting was chaired by the late Egyptian President, Mohamed Morsi. Here are some of the ideas circulated in the meeting. The leader of the Ultraconservative Islamist party, Younis Makhyoun, stated that "Egypt should back rebels in Ethiopia or, as a last resort, destroy the dam". He also said that "Ethiopia is 'fragile' because of rebel movements inside the country. We can communicate with them [opposition or rebel groups] and use them as a bargaining chip against the Ethiopian government" (Zenawi, 2013).

In response to the destabilizing efforts and plots by the Egyptian politicians in the live transmission Getachew Reda, the spokesperson of the late Ethiopian Prime Minister Hailemariam Desalegn, stated that "Egyptian leaders in the past have unsuccessfully tried to destabilize Ethiopia. "The Renaissance Dam is here to stay. It is advisable for all actors of the political establishment in Egypt to come to terms with this reality" (Zenawi, 2013). Furthermore, In December 2017, the late Ethiopian Prime Minister Hailemariam Desalegn stated that Egyptian institutions are harboring, supporting, and funding terrorist groups in Ethiopia (Middle East Observer, 2017). Cairo, however, did not accept the allegation of Addis Ababa, it rather criticized the Ethiopian authorities time and again accusation over Egypt of Ethiopia's internal problem.

In the same way, to maintain the sustainability of the hierarchy of the superior-subordinate duality order between Ethiopia and Egypt the latter has used to use the policy of isolating Ethiopia from the politics of the region. For instance, in January 2015 the Egyptian foreign minister Samah Shoukry visited Kenya and talked to strengthen bilateral relations. In his speech, Shoukry said, "We need to avoid manipulation by certain countries that don't want to see strong African governments making independent decisions" (Anadolu Agency, 2015). The speech of Shoukry was interpreted as an implicit accusation against Ethiopia's operation on the Nile River.

Furthermore, on February 18, 2017, President Al Sisi of Egypt made a one-day state visit to Nairobi. Even if President Sisi and President Uhuru claimed that the visit was to strengthen the two countries' bilateral trade and economic relations, many onlookers argued that the visit of Al Sisi has a clandestine motive to isolate Ethiopia from its old regional security ally, Kenya (Middle East Observer, 2017). Ethiopia and Kenya has a bilateral security pact since 1963. So, there is no doubt that the prime motive of Al Sisi's and his ministers' time and again presence at Nairobi is to sustain the superior-subordinate hierarchical order over the Nile by implementing diplomatic isolation against Ethiopia.

The January 2017 Egypt lead tripartite alliance between Cairo, Uganda, and South Sudan hit the headline of Egypt's ambition to isolate Ethiopia in regional politics. Here it is worth missioning the recurrent visit of the Egyptian ministers and Al Sisi to Juba and Entebbe. For instance, Sisi himself visited Uganda on December 18, 1916. Referring to Egypt's newspaper *al-Dostour*, the Middle East Observer states that "Egypt, Juba, and Uganda currently form a tripartite alliance its main target to siege Ethiopia" (Middle East Observer, 2017). Referring to an anonymous rebel official the Middle East Observer states that "There is a dirty deal going between Kiir and Al-Sisi, (...) the issue of Grand Ethiopian Renaissance Dam is one of the main deals being finalized in Cairo" (Middle East Observer, 2017).

Furthermore, in March 2018 Cairo invited South Sudan's President Salva Kiir to discuss the latter's request to be a member of the Arab League. Kiir preferred Egypt as a facilitator to be a member of the Arab League using the political acceptance of Egypt in the Arab League (Anadolu Agency, 2018). Egypt also needs to have a military base in Ethiopia's southwestern neighbor, South Sudan. Egypt also does the same action by approaching other neighboring states of Ethiopia such as Eritrea, Djibouti, Somalia, and Sudan. This is done to isolate Ethiopia from regional politics and to maintain the old hierarchy of superior-subordinate duality order over the Nile River.

In the same manner, in March 2020 Egypt's foreign minister Samah Shoukry embarked on an extensive tour to different African countries such as Tanzania, DR Congo, South Africa, Burundi, Niger, and Ruanda. In the same month, Shoukry presented the message of Al Sisi to the French President Emmanuel Macron aims to delay the filling and operation of the GERD. Concomitantly, on his tour, Shoukry implicitly accused Ethiopia and presented a call to EU member states to exert efforts on Ethiopia's stand on the Nile water. Nearly a week before his tour to Europe and Africa Shoukry has made the same tour to Arab and Middle Eastern countries (Egypt Today, 2020).

The clandestine ambition of Al Sisi and his minister's tour including Shoukry from Africa to Europe and from the Middle East to North America is clear and net; that is to isolate and defeat Ethiopia in a diplomatic market and maintain the status quo of the hierarch of the superior-subordinate duality order on the issue of the Nile River. In short,

Egypt worked in destabilizing Ethiopia, plotted a proxy war against Ethiopia, conspired against diplomatic isolation against Ethiopia, warned of military action, and so forth. However, despite this grave and countless disagreement, Egypt did not go to military action against Ethiopia to secure its superior and/or veto power rhetoric over the Nile River, nor did Cairo declare diplomatic interruption with Addis Ababa.

The Shift of the Traditional Line

The next section elucidates potential reasons why and how Ethiopia is challenging the hierarchy of the superior-subordinate order over the Nile River. Accordingly, the challenging behavior of the subordinate (i.e., Ethiopia in this case) against Egypt's order over the Nile River is clustered into three main phases.

For almost a long time challenging the superior-subordinate hierarchical order over the Nile River was unthinkable during the colonial era up until the end of the cold war era. During the colonial era, the issue of the Nile River was exclusively determined by the colonial interest of the British. As a result, there was no chance for Ethiopia to challenge the British hegemonic order over the Nile River. During the cold war period, the 'East' and 'West' ideological struggle together with the Somali irredentist movement and the Ogaden war (1977–1978) did not give a chance for Ethiopia to challenge the superior-subordinate hierarchical order over the Nile River. The Eritrean secessionist resistance movement in which the Egyptians took an active proxy role also hindered Ethiopia to challenge the status quo of the superior-subordinate order on the Nile River. However, the end of the cold war era gives the chance for the world to be under a uni-polar system. As a result, both Ethiopia and Egypt became strategic and security allies for Washington. The new global system supports creating a platform for discussion. As a result, the Nile Basin Initiative (NBI) was formed in 1999 and the first phase of Ethiopia's challenging behavior towards the superior-subordinate order over the Nile River technically started.

The geopolitical shift in the Northeast Africa region in particular and in the world at large together with the increasing demands of cooperation among upstream nations resulted in the establishment of the NBI in Uganda, Entebbe. The commission involves 11 Nile riparian states to work for fair and equitable water allocation and management. Nearly after ten years of discussion and counter discussion participants of the NBI agreed to sign the Cooperative Framework Agreement (CFA) in 2010 at Entebbe. The CFA formally introduce the issue of fair and equitable water distribution into a formal dialog in the process of the Nile water administration. The CFA committed to the complicated concept called water security. In fact "the Entebbe Agreement has shifted control over the Nile away from Egypt and Sudan, who previously had a monopoly over the river's resources as a result of colonial agreements" (Di Nunzio, 2013). Furthermore, the CFA is a clear sign that challenges the superior-subordinate order on the Nile River and the historic

veto power of Egypt over the River for the first time in history in such a cooperative manner. As a result, Egypt strongly objected to the signing and ratification of the CFA. However, despite Egypt's objection, the upper riparian states such as Burundi, Ethiopia, Kenya, Rwanda, Tanzania, and Uganda have signed it (Kimenyi and Mbaku, 2015). Egypt was also invited to sign the CFA. However, Egypt unequivocally rejected the request and withdrew itself from the NBI. Referring to Zeitoun *et al.*, Rawia Tawfik argued that the CFA is a "contestation of both the rules of the game and the sanctioned discourse underpinning the previous and long-standing hegemonic arrangement maintained by Egypt" (2015, p. 10). Moreover, while explaining the changing dynamics of the superior-subordinate order between upstream and downstream countries Salman states that the CFA is the start of "more balanced power relations vis-à-vis the downstream riparians" (2013, p. 27).

Therefore, the signing of the CFA brings a new phase in challenging the Egypt-led Nile order. Meaning, that the other technical landmark for the start of the second phase for challenging the superior-subordinate hierarchical order on the issue of the Nile River was started following the signing of the CFA in 2010. Subsequently, using the CFA as a legal backup Ethiopia officially declared the start of the construction of the GERD over the Blue Nile in March 2011. Apart from the CFA, the relative domestic peace in Ethiopia in the 2000s together with the economic development in the country instigated it to boldly challenge the existing superior-subordinate hierarchical order over the Nile River and to start a mega-dam on the River. Here, it is worth missioning once again Ali Balci's argument on "challenging behaviors of subordinates". Ali argued that "the greater the improvement in material capacities, the greater the likelihood that subordinates will challenge" (2019, p. 16).

Once Ethiopia officially launched the construction of the GERD on April 2, 2011; the situation in the superior-subordinate hierarchical order over the Nile River transformed from challenging to changing the existing order over the Nile River on the ground. The start of the project and the failure of Egypt to reinforce the so-called 'red line' on the Nile issue enabled Ethiopia a more important footprint on the deconstruction of the superior-subordinate hierarchical order over the Nile River. Another sign of Egypt's submission was reflected in the 'appeasing' gesture of Cairo under its public diplomatic staff that arrived at Addis Ababa nearly two weeks after the official start of the project. Afterward, the provisional Prime Minister of Egypt, Essam Abdal Aziz Sharif, arrived at Addis Ababa. The situation helped Ethiopia to explain the agonizing superior-subordinate hierarchical order over the Nile River to the international observers. Particularly, the situation makes Addis Ababa develop a counter narration called 'equitable and fair' water utilization to halt Egypt's veto discourse over the Nile River.

In addition, Ethiopia used the International Panel of Experts (IPoE) to counter and halt the superior-subordinate order over the Nile River. The IPoE was established to

revise the design documents of the GERD project. In the meantime, Egypt requested Ethiopia to stop the construction of the project until the final reports of the IPoE have been completed. However, late Ethiopia's Prime Minister, Melese Zenawi, noticed that "the construction of the dam won't be delayed even for a single minute" (Gizaw, 2014). Here, it is important to notice that in the superior-subordinate hierarchical order the theoretical premise argues that the rise of the potential competitor leader or "leaders with a grandiose vision are more likely to challenge" or "grandiose leaders surrounded by like-minded advisors are more likely to challenge" (Balci, 2019, 16). So, in the same line, Ethiopia's Prime Minister's unwillingness to halt the construction of the dam conceptualizes the practical challenging behavior of the subordinate in the consolidation of its counter superior-subordinate order dictation over the Nile River.

Third, Ethiopia's 'competitive' and 'assertive' move in the IPoE give way for the signing of the 2015 Khartoum Declaration of Principles by the three eastern riparian states. The signing of the March 2015 Khartoum Declaration of Principles by the heads of states of Ethiopia, Egypt, and Sudan technically noticed the inception of another phase in challenging the superior-subordinate hierarchical order over the Nile River. In the process, the Declaration of Principles accepted the construction of the GERD on the Blue Nile. Above all, in its Article IV Paragraph I the Declaration of Principles states that "The Three Countries shall utilize their shared water resources in their respective territories in an equitable and reasonable manner" (State Information Service, 2017). Article IV Paragraph I clearly defines the more likely rise of a new order on the issue of the Nile River that potentially challenges the status quo of Egypt's veto position on the River. Therefore, the changing dynamics define that the subordinate is on a track to being a new balancer and will likely challenge the hegemon.

Understanding the Challenge

The growing shift of the traditional superior-subordinate line inquest together with the transformations of the traditional parameters to manage the Nile water crisis occupied a remarkable place in the dynamics of the foreign policy agenda of Ethiopia and Egypt. Added to this, with the growing appearance of Ethiopia as an alternative military actor in the region (i.e., Northeast Africa), the Ethio-Egypt relations become at the crossroad between aggressive diplomacy and the military raid that would have the possibility to invite several actors with varieties of interests. Thus, all along the louds and softs of the two nations (i.e., Egypt and Ethiopia) foreign relations, not only, their bilateral relations are shaped by the powerfully systematized Nile water issue, but also cross-cuts the two nations' foreign policy matters at regional, continental and extra-continental levels in many ways. Thereupon, any foreign policy analysis of Ethiopia either in the Horn of Africa and/or in the Middle East or at any stage at a global level was and continued to be a major concern in the political platform of Egypt. In the same vein, Ethiopia's cross-border problem with the neighboring states such as, among others,

Somalia, Sudan, and Eritrea, and/or its active role in the AU and/or IGAD is taken seriously by Egypt. Thus, in the Northeast Africa region ideological battle, Ethiopia's move to emerging as a new balancer, which would be the new normal in the region, would remain incomplete because of the demagoguery foreign policy approach of Cairo to accept Addis Ababa as a new actor in the region.

At the same time, it is equally remarkable to note that Ethiopia is the primary challenge for the policy of Egypt in the Horn of Africa in particular and the rest of the continent at large. Meaning, it is possible to argue that without the blessing of Ethiopia the policy of Egypt in countries surrounding Ethiopia would remain incomplete. This is the way that the long-standing water dispute between Ethiopia and Egypt was and continued to be the primary challenge for the diplomatic maneuvers of the two nations in addressing their foreign policy objectives.

Against this background, there are three major lines of arguments in the process of establishing the challenges of the changing realities of the Ethio-Egypt water diplomacy. The first line of argument illustrates the discussion along with the geopolitical design of the region together with actor-based justifications. The second line of argument focuses on the state-level power-reconfiguration trajectory. The third line of justification in the course of the Ethio-Egypt water diplomacy would be illustrated from the point of system structure (i.e., from the point of the Northeast Africa regional balance of power reconfiguration).

Arguably one of the reasons that complicated the diplomatic traditions between Ethiopia and Egypt has been the geopolitical relevance of the Northeast Africa and the Horn regions together with the active role of external security actors in the political scheme of the regions. Given this, Krampe, de Goor, *et al.* argued that "the tensions among Egypt, Ethiopia, and Sudan around the building of the GERD have become part of the larger geopolitical playing field in the Horn of Africa" (2020, p. vii) for global and emerging security actors.

It is also vital to note that the climate of the diversified interests of external security actors together with the tight diplomatic traffic between Cairo and Addis Ababa has stayed and will stay a lingering and seemingly never-ending security agenda in global politics. Added to this, based on security rhetoric fodder, the presence of the military hard wares of European countries, the United States, China, the Middle East, and Asian actors in the region would complicate the diplomatic deadlock between the two nations. Meant, the Nile water political turmoil together with the active military operation of various actors with their diversified interests can boil the diplomatic traffic between Ethiopia and Egypt. Thereupon, the initial water diplomacy battle between Ethiopia and Egypt gradually become more complicated and invited major global actors and turn out to be one of the global issues that test the foreign policy priorities of major global actors in the region. In view of this, "one of the major difficulties in the [water

diplomacy of] the Nile basin is the fact that the actors are multiple, distinct and sovereign" (Yohannes, 2008, p. 15).

To illustrate the global actors middling in the Ethio-Egypt water diplomacy, it is essential to remember, for instance, Donald Trump's call to "blow up" the Ethiopian dam (i.e., the GERD) in his October 2020 speech while declaring the Israel-Sudan normalization of relations. As a result of Trump's call, the GERD issue that has remained a big factor in driving the foreign policy and politics of Ethiopia and Egypt continued to be the figurehead diplomatic matters between the two nations more than ever before (Yimer and Subaşi, 2021, p. 67). In actual words, the longer the day to find a binding solution for the water complication in the region the more global actor's role increases in boiling the water dispute.

Additionally, despite the leadership was changed in the United States in 2021, the anti-Ethiopia sentiment which was commenced during the Trump administration remained unchanged even during the Biden administration. It is apparent that the undercurrent subject that made the United States turns its back against its long-time strategic ally in the Horn region, Ethiopia, stemmed from the interest of the former to influence the latter on the issue of the GERD. What this defined us is that the United States together with its western allies gives priority to the geopolitical vitality of Egypt around the Red Sea and Northeast Africa regions above the geopolitical value of Ethiopia for the America-lead political west in the Horn of Africa.

Despite the global actor's alignment and realignment either with Ethiopia or with Egypt, what is an irony here is that while Ethiopia shifted its diplomatic gear to the political east (i.e., China, Russia, Turkey, and Iran) to fill the western abandoned gap the American lead political west recurrently tried to create artificial political agenda to portray the country (i.e., Ethiopia) as a distant "other". To verify the American lead political west's "otherization" activities against Ethiopia it is sufficient to see posts of the American embassy website at Addis Ababa between October and November 2021. For instance, despite the situation being peaceful in Addis Ababa, one of the Embassy's posts on 22 December 2021 reads: "The security situation in Ethiopia remains concerning and can deteriorate without warning. The U.S. Embassy urges U.S. citizens in Ethiopia to depart using commercially available options." On the top of this, there is a warning that reads "the Embassy is unlikely to be able to assist U.S. citizens in Ethiopia with departure if commercial options become unavailable" (U.S. Embassy Ethiopia, 22 December 2021).

But, it seems that the primary motive of the United States over Ethiopia is to urge the latter, by any means, to accept the colonial agreement on the Nile water that undermines the upper riparian nation's claim (i.e., fair and equitable water utilization). Yet, it is also evident that Washington is nurturing the Nile issue as a bargaining tool to influence Ethiopia from establishing a good social, political, and economic climate with the emerging Asian and Middle East actors. Thus, a controversy over cross-boundary resources

such as, among others, rivers paves the way for the escalation of regional tension on the one hand and aggravation of geopolitical competition among global security actors on the other. This means the escalation of the political tension between Egypt and Ethiopia over the Nile River invites geopolitical competition among the global security actors on the premises and the risk of water war tension on the flip side (Krampe, de Goor, *et al.*, 2020, p. 12). For instance, Egypt time and again threatens to use its military might to secure its water share. Here, it is important to note that the Egyptian concept of the so-called “water share” had a colonial origin that leave zero percent for the upper riparian nations (Swain, 2011, p. 691).

However, the simultaneous engagements of foreign military actors (from Europe, Asia, America, China, and the Gulf region) with varieties of interests would possibly deplete the security situation of Northeast Africa and the Horn of Africa regions by inviting proxy wars. Thus, the active backing of the regional tensions through nurturing the Nile issue by global actors would cause potential regional instability that ends up with regional instability, massive migration, social disintegration, and refuge formation that would jeopardize the security of the region. This in turn will have serious ramifications for international security (Yohannes, 2008, p. 28).

The other challenge in the process of the Ethio-Egypt water diplomacy is the trajectory on the system level power-reconfiguration of the Northeast African region. The behavior and Attitude of the Northeast African nations towards the political dynamics of the geographically proximate nations has always been a means for the system-level power reconfiguration of the Northeast Africa region. The system-level power reconfirmation, in turn, challenges the course of the Ethio-Egypt water diplomacy. In abstraction, how Egypt, Ethiopia, and Sudan project-specific patterns of power-reconfiguration beyond their national boundary in the form of alignment, realignment, rivalry, and entanglement has been challenging the Ethio-Egyptian water diplomacy.

On the specific patterns of the system-level power reconfiguration of the Northeast Africa region, the behavior of relations between Ethiopia, Egypt, and Sudan has a vital role in determining the nature of the system of the region. However, it is very essential to understand that in the patterns of the Northeast Africa system reconfiguration, arguably, Sudan oscillated between the systemic actors of the region (i.e., Ethiopia and Egypt). Meaning, in the northeast Africa subsystem, based on their behavior and attitude, while both Ethiopia and Egypt are identified as conservative and resistant to the political patterns of the region (this is legitimate because of their inflexible political approach on the Nile River), Sudan has always been identified as an unstable oscillating actor in the sub-system because of (e.g., ideological, identity, and geopolitical) influences.

The oscillating behavior and attitude of Sudan on the northeast Africa region subsystem could be seen as a good example to show the changing nature of transnational derives and the inconsistency of the nature of alignment in the Northeast Africa region

subsystem. Thereupon, as Sudan's political leaders support the case of Egypt, its foreign policy becomes antitheses to Ethiopia's cause. At other times, when Sudan's political leaders appear to support Ethiopia's cause, its foreign policy becomes antitheses to Egypt's cause.

Against this background, throughout much of the cold war era, the Ethio-Sudan relations were more belligerent than cooperative. The two nations were active in organizing militant insurgent groups one against the other. Ethiopia's allegation against Khartoum for the 1995 president Hosni Mubarak's assassination attempt further complicated the two nation's belligerency (Young, May 2020, p. 3). However, the hostile attitude started to shift for three reasons: (i) when the U.S. sanctioned Sudan for supporting terrorism; (ii) when the International Criminal Court (ICC) presented allegations against al-Bashir's war crime and a crime against humanity at Darfur in 2009; (iii) when al-Bashir's international legitimacy decline because of the above two allegations (Mulugeta, July 2014, p. 17).

The isolation of Bashir from international politics together with the failure of Egypt to provide sufficient political support to al-Bashir's cause; forced the latter to develop a trust deficit in Egypt and developed a rapprochement policy towards Ethiopia. Thereupon, al-Bashir declined his adherence to the 1929 and 1959 colonial agreement over the Nile water. In March 2012 al-Bashir announced that he has "supported construction [of] the Renaissance Dam" (Young, May 2020, p. 11). This three hundred sixty degrees twist on the policy of Sudan over the Nile water disappointed Egypt while it pleased Ethiopia. However, the friendly gesture between Ethiopia and Sudan would not be a long-lasting event in the Northeast Africa subsystem because as al-Bashir was toppled by a popular uprising in April 2019, Khartoum made the same flip-flop. In abstraction, the post-al-Bashir transitional government returned the Ethio-Sudan relations to the traditional hardline and aggressive approach. The post-al-Bashir Ethio-Sudan belligerency become more complicated when the latter militarily took control of Al-Fasheqa, a fertile agricultural area in Gonder: Northwestern Ethiopia (Yimer, February 12, 2021).

However, despite the oscillating nature of Sudan in the Northeast Africa subsystem, Ethiopia and Egypt always see in a wary eye on the subsystem. The unwavering belligerent attitudes between Ethiopia and Egypt have been recurrently challenging the peaceful water diplomacy between the two nations. Additionally, it caused a recurrent broken order in the Northeast Africa and Horn of Africa regions.

The Northeast Africa subsystem patterns of alignment, realignment, cooperation, rivalry, and entanglement amid the cycle of Ethiopia-Egypt-Sudan have also challenged the general characteristics of the Nile water diplomacy. The aggressive pattern of the Northeast Africa subsystem together with the involvement of global actors and their rivalry, additionally, made the Northeast Africa and the Horn of Africa regions a safe

haven for the involvement of non-state militant actors in shaping the political, cultural, religious, and geopolitical behaviors of the regions. The multiplicity of actors in the subsystem, in turn, complicated the Ethio-Egypt water diplomacy.

The divergence of state level-interests (i.e., ideological, identity, hegemonic, and resources) in the Northeast Africa regional subsystem has also been causing polarization of geopolitical frictions in the region. The questions of ideology, identity, resources, and hegemonic frictions in the subsystem sometimes escalate into violent and non-violent conflicts. Thereupon, for any kind of subversive and strategic actions, in the subsystem, there is an equal and comparable counter subversive and strategic reaction. These uncompromising attitudes in the Northeast Africa regional subsystem among the Northeast Africa regional actors harden the unfolding water diplomacy between Ethiopia and Egypt.

Prospects

In the dynamics of the Ethiopia-Egypt disagreement over the Nile water, despite several international negotiations having been conducted, there is arguably slight progress in deescalating the long-standing water dispute between the two nations. Discussions directed by the U.S. state department, which was later joined by the European Union and the United Nations, for instance, concluded by scoring few achievements (Polakovic, July 13, 2021). While there exists a degree of optimism as the three countries (i.e., Egypt, Ethiopia, and Sudan) signed the Khartoum Declaration of Principles (DoP) in March 2015 (Mohyeldeen, February 12, 2021), most of the consensus on the filling and operations of the dam remain in vain. Subsequently, the narrow hope to find a solution through negotiations deteriorated day by day, and the hope of optimism was gradually overshadowed by an attitude of pessimism.

As tension runs high, in the region, international mediators try to prevent the outbreak of water war. However, the inflexible behavior from both Cairo and Addis Ababa remained a challenge for prospective international negotiators. Egypt time and again, for instance, vowed not to allow the dam to reduce its water share while Ethiopia equally vowed equitable and fair water sharing, and associate the construction of the GERD with the national development project that would never harm the downstream nations. The uncompromising attitudes of the two nations over the usage of the Nile water, eventually, raised the pessimism to find binding solutions at least in the very near future.

Additionally, despite the Security Council over and over again encourages Egypt, and Ethiopia, to find a solution through negotiations at the “invitation of the Chairperson of the African Union (AU) to finalize expeditiously the text of a mutually acceptable and binding agreement on the filling and operation of the GERD, within a reasonable time frame,” (Reuters, September 15, 2021) yet, it is not clear whether Egypt and Ethiopia

will be able to resolve the standoff between the two sides over the filling and operation of the dam.

With this in mind, while the degree of prospect pessimism augmented to address the Nile complication through negotiation, Egypt, again and again, vowed to consider other options to address the water question. In June 2020, a couple of months before Hamdok's phone conversation with Trump, for instance, Sameh Shoukry said that "due to Ethiopia's obstinacy in reaching a negotiated settlement, Egypt was now considering other options for resolving the dispute" (Mohyeldeen, February 12, 2021). Shoukry's announcement reflects the gray and gloomy prospects of the two nation's water diplomacy. Indeed, his announcement does not help to build optimism for the negotiation process. Rather, it would push opponents of the agreement to take the opportunity to voice pessimism over-optimism in the negotiation process.

The recurrent failure of the two countries to reach a conclusive accord despite holding several negotiations proved that the prospect of diplomatic talks between the two nations will be more complicated. Although some onlookers say that the possibility to reach a binding agreement is not very far, some other spectators have expressed their frustration noting the gloomy prospect to reach a conclusive accord shortly. Whereby, the inflexibility and the general historical trends in the two nation's water diplomacy could reflect that the technical negotiations have turned into a political deadlock. The following three factors possibly show the current political deadlock that will support the gloomy prospect of the Ethiopia-Egypt water diplomacy.

(i) The [two] parties entered the negotiations with different needs and objectives. These different positions have historical roots and are part of the respective countries' traditional approaches to Nile Basin management; (ii) The GERD is situated in a geopolitical hotspot. The region is turning into a competition stage for external actors over its natural resources, such as oil, natural gas, hydropower, and precious metals. It is a region evincing a number of overlapping conflicts, with alliances forming across conflicts that are becoming hard to separate. The region also hosts external armed forces from over a dozen countries, including the United States, France, and China. This creates partisanship in terms of which country external actors support, and; (iii) The domestic costs of the negotiations for the [two] countries are high. State leaders tied their own hands in the negotiation process by adopting nationalist rhetoric to make domestic gains. The political climate is also fragile, with intrastate and border disputes leading to waning trust and increased accusations of meddling (Attia and Saleh, July 2021, p. 1).

The dubious prospect of comprehensive water deals and its possible outcome could be further traffic of aggressive diplomatic campaigns one-another and extension of talks which are overshadowed by a trust deficit. However, such kind of approach-which could

never result in a desirable outcome for the two nations' water complications- would risk the diplomacy of the two nations in particular and the security situations of the broader Northeast Africa region in general.

Conclusion

In the superior-subordinate hierarchical order of the Nile River, the subordinate has used approaches such as, among others, legal, discursive, individual leader's experience, global and regional geopolitical shifts as a means to challenge the Egypt-led power order over the region. In the process of challenging the Egypt-led order, the consecutive double-digit economic growth in Ethiopia in the 2000s has helped Addis Ababa to charge a more 'competitive' and 'assertive' policy over the Nile River against the Egypt-led hegemonic order. Apparently, the political experience of the late Ethiopian Prime Minister (i.e., Meles Zenawi) had possibly helped to challenge the Egypt-led order on the Nile River. Given the fact that "Grandiose leaders surrounded by like-minded advisors are more likely to challenge", (Balci, 2019, 16) the 20 years of political experience of Melese Zenawi's role is more visible in challenging the long-standing superior-subordinate order over the Nile River by preaching the discourse of 'equitable and fair' water resource sharing and launching the GERD on the Blue Nile in 2011. Furthermore, the signing of the Cooperative Framework Agreement (CFA) in 2010 and the Declaration of Principles in 2015 at Entebbe and Khartoum respectively also laid remarkable phases in the process of challenging the Egypt-led order over the Nile River.

Arguably one of the reasons that complicated the diplomatic traditions between Ethiopia and Egypt has been the geopolitical relevance of the Northeast Africa and the Horn regions together with the active role of external security actors in the political scheme of the regions. Given this, Krampe, de Goor, *et al.* asserted that "the tensions among Egypt, Ethiopia and Sudan around the building of the GERD have become part of the larger geopolitical playing field in the Horn of Africa" (2020, p. vii) for global and emerging security actors.

On the other hand, as tension run high, in the region, international mediators try to prevent the outbreak of water war. However, the inflexible behavior from both Cairo and Addis Ababa remained a challenge for prospective international negotiators.

In abstraction, if Cairo refuses to accept the principle of 'equitable and fair' water resource sharing, how the prospect order of the Nile River can be defined. Will Cairo rebuild its dominant order over the Nile River? Although the probability of its success is 'one in a million' there will be trials from Cairo to regain the status quo of its exclusive dominant position on the Nile River. However, as a highly possible scenario — Egypt will give a say to the upstream countries and will accept the inevitable realities of 'equitable and fair' water sharing as mentioned in Article IV Paragraph I of the 2015 Khartoum declaration.

References

1. Al Jazeera. (2020). Ethiopia's Abiy hails 'historic' start of disputed dam filling. Retrieved from <https://www.aljazeera.com/news/2020/07/ethiopia-abiy-hails-historic-start-disputed-dam-filling-200722144600826.html>.
2. Anadolu Agency. (2015). Kenya thanks Egypt for anti-cancer support. Retrieved from <https://www.aa.com.tr/en/health/kenya-thanks-egypt-for-anti-cancer-support/84153>.
3. Anadolu Agency. (2018). In Cairo, South Sudan leader seeks Arab League membership. Retrieved from <https://www.aa.com.tr/en/africa/in-cairo-s-sudan-leader-seeks-arab-leaguemembership/1086597>.
4. Attia, H., & Saleh, M. (July 2021). The political deadlock on the Grand Ethiopian Renaissance Dam. The German Institute for Global and Area Studies (GIGA) Focus Africa.
5. Balci, A. (2019). A three-level analysis of Turkey's crisis with the U.S.-led Order. *Insight Turkey*, 21(4), 13–24.
6. Daily News Egypt. (2020). Egypt's Foreign Minister full speech on GERD at UNSC. Retrieved from <https://dailynewsegypt.com/2020/06/30/egypts-foreign-minister-full-speech-at-uns-c-on-gerd/>.
7. Di Nunzio, J. (2013). Conflict on the Nile: The future of trans boundary water disputes over the world's longest river. *Future Directions International*. Retrieved from <https://www.futuredirections.org.au/publication/conflict-on-the-nile-the-future-of-transboundary-water-disputes-over-the-world-s-longest-river/>.
8. Egypt Today. (2020). Egypt's FM Shoukry to embark in African tour to deliver message from Sisi. Retrieved from <https://www.egypttoday.com/Article/1/82670/Egypt%E2%80%99s-FM-Shoukry-to-embark-in-African-tour-to-deliver>.
9. Ethiopian National Archive and Library Agency (ENALA). (1902). Ethiopia-Somalia Frontier. 17-2-268-02A, Treaties between the United Kingdom and Ethiopia and Between the United Kingdom, Italy, and Ethiopia relative to the frontiers between the Sudan, Ethiopia, and Eritrea. ENALA.
10. Gizaw, M. (2014). International rivers should know GERD won't be delayed even for a single minute. *Tigray Online*. Retrieved from <http://www.tigraionline.com/articles/exposing-ngos.html>.
11. Kimenyi, M. S., & Mbaku, J. M. (2015). The limits of the new 'Nile Agreement'. *Brookings*. Retrieved from <https://www.brookings.edu/blog/africa-in-focus/2015/04/28/the-limits-of-the-new-nile-agreement/>.
12. Krampe, F., Van de Goor, L., Barnhoorn, A., Smith, E., & Smith, D. (2020). *Water security and governance in the Horn of Africa*. SIPRI Policy Paper No. 54. SIPRI.
13. Middle East Observer. (2017). Al-Sisi visited Kenya amid Egypt's excessive activities with Ethiopia's neighboring countries. Retrieved from <https://www.middleeastobserver.org/2017/02/20/al-sisi-visited-kenya-amid-egypts-excessive-activities-with-ethiopias-neighboring-countries/>.

14. Mohyeldeen, S. (February 12, 2021). The dam that broke open an Ethiopia-Egypt dispute. *Carnegie Middle East Center*. Retrieved from <https://carnegie-mec.org/2021/02/12/dam-that-broke-open-ethiopia-egypt-dispute-pub-83867>.
15. Morsy, A., & Alaa El-Din, M. (2019). Egypt's Sisi says 'dams on the Nile would have never been built was it not for the impact of 2011. *Ahramonline*. Retrieved from <http://english.ahram.org.eg/NewsContent/1/64/347744/Egypt/Politics-/Egypts-Sisi-says-dams-on-the-Nile-would-have-never.aspx>.
16. Mulugeta, K. (July 2014). *The role of regional powers in the field of peace and security: The case of Ethiopia*. The Friedrich Ebert Stiftung.
17. Polakovic, G. (July 13, 2021). Water dispute on the Nile River could destabilize the region. Retrieved from <https://news.usc.edu/188414/nile-river-water-dispute-filling-dam-egypt-ethiopia-usc-study/>.
18. Reuters. (September 15, 2021). U.N. Council urges Egypt, Ethiopia, Sudan to restart dam talks. Retrieved from <https://www.reuters.com/world/africa/un-council-urges-egypt-ethiopia-sudan-restart-dam-talks-2021-09-15/>.
19. Salman, M. A. (2013). The Nile Basin Cooperative Framework Agreement: A peacefully unfolding African spring? *Water International*, 38(1), 17-29.
20. State Information Service. (2017). Agreement on Declaration of Principles between Egypt, Ethiopia and Sudan on the GERDP. Retrieved from <https://www.sis.gov.eg/Story/121609/Agreement-on-Declaration-of-Principles-between-Egypt%2C-Ethiopia-and--Sudan-on-the-GERDP?lang=en-us>.
21. Swain, A. (2011). Challenges for water sharing in the Nile Basin: Changing geo-politics and changing climate. *Hydrological Sciences Journal*, 56(4), 687-702.
22. Tawfik, R. (2015). Revisiting hydro-hegemony from a benefit sharing perspective: The case of the Grand Ethiopian Renaissance Dam. *Germen Development Institute*.
23. U.S. Embassy Ethiopia. (22 December, 2021). Retrieved from <https://et.usembassy.gov/security-message-security-situation-and-commercial-air-availability-from-addis-ababa/>.
24. Wirtschafter, J. (2019). Egypt water anxiety grows over Ethiopia dam on Nile. *AP News*. Retrieved from <https://apnews.com/25fe417a2419c4cacdd72643eba3e9ef>.
25. Yimer, N. A., and Subaşı, T. (July 2021). Trump's securitization 'Speech Act' on the Grand Ethiopian Renaissance Dam (GERD). A risk on the Ethiopia-Egypt water diplomacy. *Conflict Studies Quarterly*, 36, 66-82.
26. Yimer, N. A. (February 12, 2021). All-out-war between Ethiopia and Sudan on the doorstep? *Politics Today*. Retrieved from <https://politicstoday.org/all-out-war-between-ethiopia-and-sudan-on-the-doorstep/>.
27. Yohannes, O. (2008). *Water resources and inter-riparian relations in the Nile Basin: The search for an integrative discourse*. State University of New York.
28. Young, J. (May 2020). *Conflict and cooperation: Transitions in modern Ethiopian-Sudanese relations*. HSBA Briefing Paper. HSBA.

29. Zane, D. (2020). Nile Dam row: Egypt and Ethiopia generate heat but no power. *BBC News*. Retrieved from <https://www.bbc.com/news/world-africa-53327668>.
30. Zenawi, M. (2013). Egyptian politicians caught plotting how to attack Grand Ethiopian Renaissance Dam. Retrieved from <https://www.meleszenawi.com/egyptian-politicians-caught-plotting-how-to-attack-grand-ethiopian-renaissance-dam-video/>.