



Understanding status of forces agreements: what shapes jurisdictional control?.

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Understanding Status of Forces Agreements: What Shapes Jurisdictional Control?

by

Aubree Herrin

A thesis submitted in partial fulfillment
of the requirements for the Doctor of Philosophy
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Abstract

Status of Forces Agreements are military agreements that identify the legal status of military forces stationed peacefully abroad. These agreements have been shown to shape political campaigns, promote massive protests and shape the relationship between the military and citizens of countries that host military presences. This dissertation creates the first global dataset of these agreements, including US and non-US bilateral agreements after WWII. Using this new dataset this dissertation evaluates the role of strategic value and interstate trust in shaping jurisdictional outcomes within these agreements using a newly created ordinal measure of jurisdictional control.

In addition to logistical analyses five case studies are completed to explore how the presence of an immediate threat, and the coherence of demands for change, influence how effective attempts at renegotiation are. This study finds that proximity to conflict and sources of trust do significantly shape jurisdictional control, but traditional understandings of power have no effect on SOFAs. This dissertation provides the first global empirical analysis of these agreements and is the first step in understanding what shapes these agreements that have heretofore been missing from large-n studies.

Public Abstract

What determines who gets to prosecute a crime committed by a military officer when they are stationed abroad? Status of forces agreements (SOFAs) are the military agreements that codify this process, but up until now there has not been a global dataset of these agreements. Using this new dataset this dissertation creates a single scale to measure all status of forces agreements along a single scale. There are over 30 countries around the world that have stationed forces abroad, and each time those forces are hosted in a new country, a new SOFA is established.

This thesis uses the new dataset to identify the role of strategic value or trust on how these agreements are negotiated. These agreements are incredibly important to the countries that host foreign troops, over the years SOFAs have become parts of presidential campaigns, been the source of anti-American sentiment abroad, and led to thousand-strong protests. To understand what motivates these events, and potentially reduce the more negative outcomes, the agreements that shape military presences abroad need to be understood first.

Using mixed-methods this thesis finds that trust is a significant factor in shaping these agreements, and when countries attempt to renegotiate, there needs to be both coherent demands and an immediate threat for official change to occur.

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Chapter 1 Introduction

This dissertation looks at what shapes Status of Forces Agreements (SOFAs). These military agreements determine how visiting forces are treated in foreign countries. Changes in their structure can mean a state gives up legal control over their citizens. When negotiating a SOFA how does the cost-benefit analysis work for the sending and the receiving states? Ensuring the constitutional rights of citizens is an important issue, so why would either state give up control within these agreements? Then, what makes a successful renegotiation if a state is unsatisfied with the initial agreement? To answer these questions there are several key terms that must first be defined. First, what is a SOFA?

What is a SOFA?

SOFAs are a type of military agreement established to structure and clarify how visiting forces should behave, and what actions can be taken to regulate their behavior. These agreements are created by two parties who are peacefully sending forces from one state to another. The sending state is placing forces in the territory of the receiving state. In general, these agreements are between state A and state B, with state A sending forces to state B. But, in some cases multiple states or an international organization can collectively send forces to a single receiving state. The goal of a SOFA is to protect the citizens of the state sending forces and the state receiving forces. Sending states want to protect their citizens from unfamiliar laws in a foreign country, and host states want to ensure their citizens are protected, and their sovereignty is respected by foreign forces.

SOFAs are frequently ignored documents, folded into broader discussions of military agreements or basing, but the particulars of these agreements are vital. The structure of SOFAs has been connected to thousand-strong protests, presidential campaign platforms, France's disintegration with NATO's military structure, human trafficking and more. By ignoring these agreements, scholars are missing a key element in understanding these events. This dissertation creates the first global study to begin the process of systematically understanding what shapes these agreements.

SOFAs have in large part, been lumped together into the discussion of military bases because bases also talk about forces present abroad, but SOFAs cover a much broader range of agreements. An evaluation of military bases requires the presence of a military base, an extensive

endeavor, while all SOFAs need are individuals to be present. Sometimes these forces live in extensive military bases, but in other instances they are just training individuals, acting as liaisons, or creating an outpost for transportation. The focus on large, long-term military basing has ignored the short term and small deployments of troops that still interact with the citizens and laws of foreign states. SOFAs are the most comprehensive source for evaluating the effect of military forces within receiving states, not military bases. To understand SOFAs is to have a clear understanding of how sending state forces interact with the receiving state, and how their legal status is shaped.

But first, some key terms. The “sending state” is the state that is sending their forces into the territory of another state, these forces are also called “visiting forces” by others. The “receiving state” is the one hosting those visiting forces within their own territory. They have also been called a “host state” by some. Finally, the “forces” being mentioned include military personnel, dependents, contractors and other individuals that are affiliated with the sending state’s mission.

Part of the reason why SOFAs have been difficult to study is their adaptable structure and sometimes informal nature. Training missions can be as short as a week, and require only a few personnel, while others like the NATO SOFA concern several countries and their establishment of permanent bases for decades. Below are some examples, demonstrating how SOFAs are adapted to situation and how their contents reflect that.

The SOFA negotiated between the United Kingdom and the Netherlands was created for the troops stationed in the Netherlands by the United Kingdom’s armed forces for mission “Caribbean Lion 2006”. The duration of this agreement was limited to one year at the maximum and covered a limited number of topics. Facilities for the military to use were provided, disputes would be settled between the two states governments, and unless otherwise stated the criminal jurisdiction would follow the rules established by the NATO SOFA. The United Kingdom’s SOFA was not a broad one, covering a limited amount of time¹.

In comparison, the agreement between the United States and Albania, established in 2004, covers a much broader range of topics. Entry and exit into the country, taxation, customs procedures,

¹ Secretary of State for Foreign and Commonwealth Affairs. 2006. “Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands Concerning the Status of Military and Civilian Personnel of the UK Armed Forces who will be present in the Netherlands Antilles and Aruba for the Exercise ‘Caribbean Lion 2006’” *The Stationary Office*.

and currency exchanges. Criminal jurisdiction is another key topic, as well as what cars can be used and how to obtain drivers licenses. This agreement once established, would last until both states agreed to dissolve it and could be amended later. This agreement was much more extensive, reflecting the longer duration and increased integration between sending and receiving state citizens².

One final example from the UN and Cyprus. This SOFA covered forces and personnel sent to Cypress by the UN. This agreement began when the first individual from the UN arrived and would end when the last person had left. This agreement was also extensive, covering jurisdiction, taxation, customs, postal services, use of transportation services, currency, and disposal of deceased personnel. There is no specific mission associated with this agreement, and the establishment of taxation and postal services suggests that the SOFA will cover an extended period.³

Figure 1. Structures in SOFAs

United Kingdom Netherlands	United States Albania	United Nations Cyprus
1 year	Lasts until both states dissolve agreement	Lasts until last member of sending forces leaves
Use existing facilities	Entry and exit into the country	Jurisdiction
Dispute Settlement NATO style jurisdiction	Taxation Customs	Taxation Customs
Specific mission	Currency Exchange Jurisdiction	Currency Transportation Disposal of deceased personnel Postal Services

Figure 1 shows that SOFAs can vary greatly in their contents, but their purpose remains the same. Each of these agreements necessitate the creation of a SOFA, and while a base may need

² Department of State. 2004. "Agreement between the United States of America and Albania." *Treaties and other International Acts Series 04-819*.

³ UN Secretariat. 1964. "Items-In-Peace-Keeping-Operations-Cyprus-Status Agreement between the UN and the Government of Cyprus re:UNFICYP."

to be built in the last two cases, the United Kingdom-Netherlands agreement uses existing facilities, and did not create a new military base. In most studies of military bases, that observation would not be included, even though it still results in a direct interaction between visiting forces and host country citizens. SOFAs are present in each of these cases, as their defining requirement is not the construction of a base, but the presence of visiting forces. This adaptability is interesting, but has made it difficult to study SOFAs in a large-n style, how can one accurately compare these agreements and identify patterns if they don't share any characteristics? That's where the discussion of criminal jurisdiction provides the solution.

Criminal Jurisdiction in SOFAs

Looking back at figure 1 it is clear the structures in SOFAs can vary to better suit the situation they are in. But there is one common characteristic in each of those agreements, the discussion of criminal jurisdiction. The length and scope of an agreement can make things like currency exchanges or housing superfluous, but when forces are visiting another territory the criminal jurisdiction process is relevant in all cases. The jurisdictional section is what separates the legal status of military forces from that of the average tourist visiting a country (Voetelink 2015). In SOFAs the section on criminal jurisdiction determines which state has the right, or jurisdiction over the visiting forces in instances of criminal activity.

Figure 2. Parts of Criminal Jurisdiction

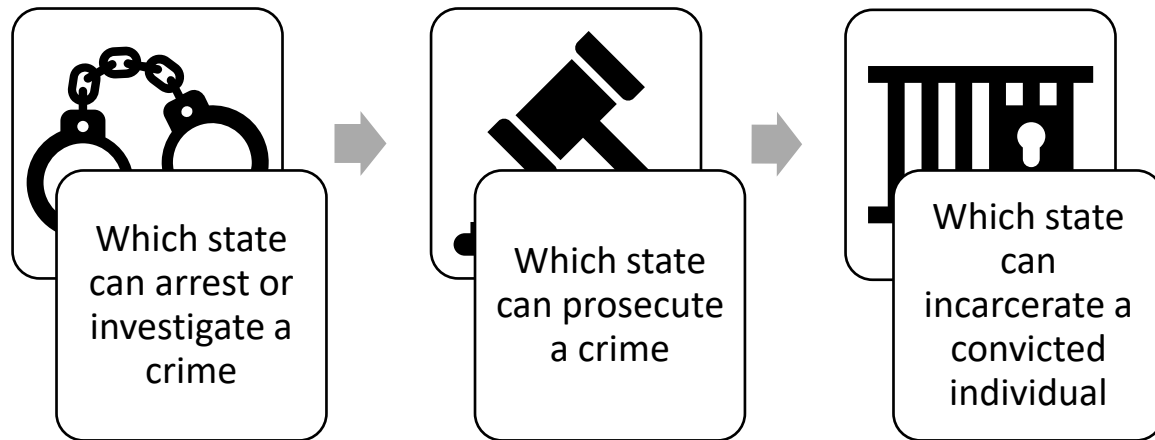


Figure 2 shows the three parts of the criminal jurisdiction discussion: investigation, prosecution and incarceration. Concerning only the visiting forces, which state has the authority to investigate crimes? Investigation covers the entire process of looking for evidence, holding the accused until trial and creating a case. Several factors are frequently discussed within SOFAs including questions on what decides when actions are “in the line of duty”, the border between the sending and the receiving state territory, and at what point the accused needs to be turned over to the sending state. Do the states have to work together, or at least update the other members about the investigation process? What evidence must be given over? If someone is arrested where are they held before the trial? All these questions are addressed in the criminal jurisdiction section of a SOFA, and they determine which state has the authority to start the investigation process. They decide what kind of crimes fall under the control of the sending state, and which are under the control of the receiving state. This discussion only covers visiting forces, the nationals of the receiving state never fall under the purview of the SOFA unless they become affiliated with the visiting forces.

Once the accused is arrested which state has the power to prosecute the crime? The prosecution portion of criminal jurisdiction deals with questions surrounding the trial of the accused. Can the visiting forces be sent home and prosecuted there? Or if they are to be tried in the visiting state,

what rights are they guaranteed? Do they get an interpreter, a lawyer? How are witnesses presented, and what information can be used in the trial? When the receiving state has control, the visiting forces are entering into a new legal process, this may encourage the sending state to build guaranteed rights into the SOFA to ensure a fair trial.

The final part of the criminal jurisdiction process contains the result of the trial. If the accused is found guilty, which state can carry out the sentence. Will they serve time in the receiving state or the sending state?

Altogether each of these questions needs to be answered in the jurisdiction section of a SOFA. As mentioned above, the purpose of this section of a SOFA is to protect the rights of citizens. The constitutional rights of sending state forces are protected by guaranteeing certain rights and behaviors, while receiving state citizens are protected by showing that the sending state forces are not immune from justice. The categorization of jurisdictional control comes from changes across these three parts of criminal jurisdiction.

Why is Jurisdiction so Important?

Conceptually SOFAs are created and negotiated to protect the troops sent to foreign countries, to ensure that their constitutional rights within criminal justice and other issues are still enforced, no matter where in the world they are (Sciacca 1973). As discussed above, much of the topics present in the criminal jurisdiction portion of SOFAs are seeking to guarantee certain rights to citizens. The United States has been upfront with why they seek to retain jurisdictional control over their forces when deploying them with SOFAs. States are working to preserve the legal rights of their citizens through the jurisdictional section of a SOFA. In the “Report on status of Forces Agreements” the United States stated exactly why jurisdiction is such a concern.

“This is important not only to protect the rights of U.S. service members and to vindicate the United States’ interest in exercising disciplinary jurisdiction over U.S. uniformed personnel, but also because U.S. willingness to deploy forces overseas – and public support for such deployments – could suffer significant setbacks if U.S. personnel were at risk of being tried in an inherently unfair system, or at any rate, in one that departs fundamentally from U.S. concepts of basic procedural fairness” (ISAB 2015)

States are always seeking to ensure the protection of their forces, and to ensure that their citizens are not taken advantage of in a foreign country (Cha 2010; Voetelink 2015; Levitt 1990). Concerns over sovereignty have been the focus of much of the previous SOFA literature. While jurisdictional discussions can stray into this discussion of sovereignty, at the end of the day the goal of SOFAs and the jurisdictional section they contain is to protect the rights of citizens. There are many ways that SOFAs have contributed to the actions of states, citizens, and political leaders. The literature on SOFAs has recently focused on in-depth case studies, and the beginning of global discussions of SOFA structures, along with changes in recent basing behaviors (Moon 1997; Moon 2010; Gillem 2007; Cooley 2008; Vine 2017; Kawato 2015). The case studies have demonstrated that SOFAs can have serious domestic effects, prompting protests, influencing the actions of politicians and in some cases denying states the opportunity to create bases. The new shifts in United States basing strategy to a lily-pad deployment means that evaluations of military bases no longer accurately reflect how the United States forces are deployed around the world. SOFAs create a direct connection between citizens and international military strategy. South Korea and its SOFA with the US will be explored in more depth in a later chapter, but it provides a great example of how the specifics of a SOFA can shape a variety of behaviors.

United States-South Korea

The United States has had forces stationed in South Korea for decades, established after the Korean War the SOFA between the two states has had major repercussions. The first major jurisdictional issue was the camptowns that developed around US bases. The long-term sociological behaviors and effects of US bases has been explored by many researchers including *Over There*, an extensive look at the hybrid areas around US bases (Moon 2010). In the 70's the areas around the US bases developed into camptowns where local women were trafficked, and sex work was common. The SOFA did not cover this issue, as military member participation in sex work was not punished by the US (Moon 1997).

The kijich'on movement began in the late 80's, arguing that women were being exploited and the US SOFA needed to be revised to discourage and punish this behavior. Domestic outrage grew even more intense as sex workers were killed in 1992 and again in 2000 by American military personnel. Other protest groups grew out of this issue including My Sister's Place, Saewoomtuh, Women Making Peace, and Magdalena House. The US-South Korea SOFA was reimplemented

to emphasize that forces who were caught in these areas or participating in this behavior would be punished (Kawato 2015).

These groups were able to produce enough domestic pressure to make the US restructure how US forces were punished and the actions, or lack of action from the US created intense domestic dislike for the sending state. But, while these domestic protests are powerful, they only shifted how visiting forces were punished for certain behaviors, and this change can be attributed to US senate actions against human trafficking, and not from any response to South Korean pressure (Kawato 2015). The biggest change was prompted in response to over crimes committed by US military personnel.

The SOFA negotiated between the US and South Korea gave the United States military jurisdictional control over military personnel if crimes were committed in the line of duty, and in 2002 two US military personnel were driving a government vehicle from a military mission and struck two South Korean schoolgirls. The girls died, and following the jurisdictional component of the SOFA, the US personnel were prosecuted by the US military. The military tribunal found the officers not guilty of negligent homicide, prompting domestic protesting. South Koreans felt that the sovereignty of their state was not being respected, and demanded South Korea renegotiate the SOFA with the US to allow for US personnel to fall under South Korean jurisdiction even when performing acts in the line of duty (Kawato 2015; Moon 2010; Cooley 2008).

Once again protests against the US SOFA erupted, demanding a renegotiation of the jurisdictional component of the SOFA. But, different from the camptown protests, this movement attracted the attention of local political elite. Presidential candidate Roh Moo-hyun incorporated demands for SOFA renegotiation into his election campaign. In 2002, he won his election and followed through, approaching the United States and successfully getting a renegotiation with the United States (Kawato 2015; Cooley 2008). While the specific demand around “in line of duty” was not met, the new agreement included several new constraints about which state can hold individuals accused of a crime, and how the punishment must be served. These protests were surrounding the specific wording of the jurisdiction section of a SOFA, and it not only created massive domestic protests, it shaped a presidential campaign and can be connected to determining who won the 2002 South Korean election.

One issue with this discussion is separating the protests over SOFAs from protests around military basing in general. There is a strong literature discussing anti-basing movements, and the actions of local citizens against foreign presences (Lutz 2009; Yeo 2011; Kawato 2015). But again, while bases overlap in many ways with SOFAs, they are not the same. Kawato explore several cases in South Korea where protest groups were motivated by anti-base sentiments, engaging in actions to discourage the establishment and expansion of military bases. And while these actions are interesting, they are not shaping the SOFA between the two states, demonstrating how SOFAs are unique in the scope of military alliances.⁴

Looking Ahead

The goal of this dissertation is to explain which state gets more jurisdictional control in an agreement and what explains any changes to that control. If the goal of a SOFA is to protect the legal rights of citizens, then the split of jurisdictional control is an excellent metric for determining what factors outside of the SOFA are more valuable for the state than protecting those rights or can create trust that those rights will be upheld. This study uses realist and constructivist understandings of what makes an agreement valuable to a state. Using these expectations this study evaluates how SOFAs differ from standard assumptions of state power and coercion. When negotiating an agreement, if states fail to agree both members will pay a cost attributed to failure. This cost of failure can be high if a state places a high strategic value on a SOFA, or if the state is weaker in a military or economic sense. Expanding to a more constructivist understanding, what role does trust play when states are negotiating SOFAs, separate from the cost of failure, if one state trusts the other will they concede jurisdictional control to focus on other areas of negotiation?

In this study I seek to understand what factors influence the initial jurisdictional structure of SOFAs. To do this I created the first global dataset of SOFAs up to 2017. Focusing on SOFAs established after WWII these agreements occur mostly after 1950, but some are pulled from earlier years if they continued to exist past the 1950s. This includes some interesting outlier cases like the US-Cuba agreement over Guantanamo Bay. This agreement, signed in 1903 is the earliest in the dataset, and is still in use today. Instead of signing a separate agreement for the establishment of this base, the entirety of the SOFA was built into the Cuban constitution.

⁴ A more extensive discussion of the US-South Korea relationship is included within the case studies at the end of this dissertation.

This dataset includes the universe of 236 available cases, 56 of which include international organizations and 177 which will be included in an empirical evaluation of what influences the structure of SOFAs. The next chapter will provide an overview of previous literature on SOFAs and military bases. There have been dramatic changes in the understanding of these agreements. Early studies consider the NATO SOFA the only case, or only one of 6, and discuss them as basing agreements, demonstrating that the conflation of basing and SOFAs has existed since the beginning of the literature (Snee and Pye 1957; Crandall 1991).

The third chapter will explore how “cost of failure” is expected to influence states. Connecting the concept to alliance negotiation and military strategies and how those factors can make an agreement more costly for a state. This cost discussion is connected to the hypotheses on state power, strategic importance and the preexisting history of member states. High costs associated with failure to establish an agreement has been shown to encourage concessions from states.

The fourth chapter will use the constructivist discussion of trust to augment the previous chapters models. Trust can be built through similarity in systems and institutions. This chapter will use legal system similarity and shared colonial history to evaluate the role trust plays in increasing the likelihood of jurisdictional concessions. When states are more trusting they should negotiate more compromise-based SOFAs as they trust that their citizen’s rights will still be protected.

The fifth chapter will use qualitative assessments of five cases to explore how SOFAs behave when states attempt a renegotiation of the initial agreement. The quantitative tests are frozen at the initial signature point for each agreement, and understanding these cases is important, but they are also limited. The renegotiation cases consider the role of strategic value and immediacy of threat in the ongoing cost of failure considerations of states

Finally, the concluding chapter will synthesize these results and explore future directions for this data. Evaluating and understanding SOFAs at a global level will allow us to understand a type of agreement that many disregard but are incredibly salient for citizens in receiving states. By ignoring these agreements, we have missed an agreement that creates a direct relationship between domestic politics and international considerations. SOFAs make foreign policy incredibly important to citizens who now directly interact with forces that would otherwise not be present in their country. Understanding what shapes this relationship is vital for our understanding of military alliance behaviors and decisions.

Chapter 2 What are SOFAs

This chapter will survey the existing literature on causes and consequences of military bases and SOFAs. In addition, it will create a typology of criminal jurisdictional control to be used as the key dependent variable in the following three empirical chapters. This chapter will describe the data on SOFAs including collection procedures, the method for creating the jurisdiction typology, and summary data of SOFAs around the world. This dataset will be used in the next two chapters to quantitatively assess influences on jurisdictional control. This chapter looks through the previous literature to see what military literature expects and how this new study fills in gaps. In addition, the literature specific to SOFAs is considered, and can most clearly show how this study addresses a need within the literature. The second half of this chapter will break down how jurisdiction is categorized in this study and the summary information about how these categories are observed.

Previous Literature from Alliances to Bases

Creating a single dataset of SOFAs and providing a single measure through which all these disparate agreements can be compared demonstrates the contribution of this study while also recognizing the existing analyses on this topic. The literature on SOFAs is small and most commonly is focused on individual cases and the effect of the SOFA on military strategy and receiving state citizens. The related literature surrounding military bases does touch on SOFAs and has connected attitudes toward military bases with SOFA agreements and the division of jurisdictional control (Vine 2017; Cooley 2008; Yeo 2011).

Basing Literature

The basing literature has predominantly focused on the patterns and issues that influence the United States and its decisions when establishing a military base. The United States is the most prolific sender of forces overseas and has built several long-term bases that have become institutions in their host countries. Several case studies have been completed identifying the socioeconomic effects of the US bases in South Korea (Moon 2010), Japan (Gher 2002; Vine 2017), the Philippines (Vine 2017), and West Germany (Moon 2010). The hybrid zones have encouraged national resistance towards hierarchy and grassroots resistance towards the bases themselves have been evaluated (Moon 2010; Moon 1997). These studies have done great work to identify patterns in receiving state dissatisfaction and have solidified interaction between the

receiving state citizens and the sending state forces as the source. These studies identified the SOFA as a component of this relationship but have not studied the agreements themselves to understand what produced the structure that is creating these outcomes.

Comparative studies of SOFA agreements use a variety of frameworks to evaluate relevant SOFAs. These long-term assessments have assessed violations to these agreements and how they can induce domestic protest as seen in South Korea (Cha 2010; Yeo 2011). And others discuss how the agreements were negotiated or renegotiated because of legal issues (Shuck 1957; Tao 1971). Others seek to provide an overview of the general framework for a SOFA and similar assessments of alliances; they measure what outcomes are generated in these cases (Jenks 2010; Sari 2009). In all these studies the SOFA has been the independent variable, the factor producing the outcomes, but no one has tried to identify what creates these unique structures in the first place.

Moving from the comparative assessment of military bases, there are several specific characteristics that have been connected to encouraging the establishment of foreign bases. Regime type has been shown to influence sending state decisions as elites use signals of support to increase their strength with authoritarian regimes benefiting the most (Cooley 2008; Vine 2017). Economic considerations are also influential in the decision to establish military bases (Vine 2017). States with smaller economies stand to gain more influence through the external signal of support when a state chooses to pursue a base in the smaller state's territory. When states host foreign bases, they spend less money on security, and can spend that money instead on other issues (Cooley 2008).

Together these different literatures have provided a thorough understanding of the long-term effects of military bases, as well as an understanding of the effects of the structure of SOFAs over time. These studies have scrutinized basing strategies, but in many cases focus entirely on the United States and its policies. This focus on the United States has allowed researchers to explore the long term social and economic effects of US military bases abroad. However, it is only part of the picture of military bases as many other countries send forces abroad and operate bases in foreign nations. Finally, the legal analysis literature has created an in-depth understanding of the fact, that while SOFAs can vary greatly in their contents the section discussing jurisdictional control is the most salient. Jurisdictional control is most clearly connected to the goal of these agreements, to protect the legal rights of citizens.

SOFA Specific Literature

SOFAs have been a continuous point of contention for both sending and receiving states as both debate the best structure and application of the rules laid out in each agreement (Voetelink 2015; McDonald and Bendahmane 1990). Before WWII these agreements were temporary in nature, designed to provide clear rules for troops passing through to understand their expected behaviors (Baxter 1958). After WWII there was a fundamental shift in how SOFAs were applied. Where before they covered troop movement through states, they now covered military bases abroad (Baxter 1958; Barton 1954). The agreement that signaled and exemplified this shift is the NATO SOFA. This agreement included multiple states and established a long-term basing policy within Europe (Baxter 1958; Snee and Pye 1957). Member states shifted negotiation strategies from temporary to quasi-permanent (Chayes and Chayes 1993).

With this major change, norms that had been established about how jurisdiction should be allocated when friendly forces were present in a state had to change. Researchers in SOFA literature have a few key cases that come up time and again. They show how norms of SOFA structures have evolved over time. All the literature demonstrates that jurisdictional control has always been a focal point of member state negotiation. There is *Schooner*⁵ *v* *McFadden*, the initial case setting up the norm of peaceful troops and jurisdictional control, *Girard v Wilson* which determined if a direct order was needed for something to occur in the line of duty, and the *Whitley* case that argued that once jurisdiction had been waived⁶ it could not be undone (Voetelink 2015; Lutz 2009; Snee and Pye 1957; Shuck 1957; Schwenk 1972).

A separate legal question within SOFAs concerns how they interact with international law. This question is not directly addressed within this study, but it would be remiss to ignore another issue that separates SOFAs from the norm. Not only do SOFAs distinguish military forces from the average international tourist, SOFAs essentially remove military forces from international law (Voetelink 2015; Rosenfield 2003; Wedgewood 1999; Jenks 2010; Cha 2010; Scheffer 2005). The jurisdictional division in these agreements divide up control between the sending and the

⁵ Not a name, literally a schooner, a boat

⁶ Waivers are a concept within SOFAs that determine if one state is giving up control. Essentially, if a state has waived jurisdiction then it has given control to another state. These are an interesting facet of SOFAs and do play a part in the jurisdictional control element of the agreement, but it is impossible to know how frequently they are used across cases reliably. Alexander Cooley does have data on waiver use by the US, and they can be discussed in context of specific cases, but extreme in-depth research would be needed to reasonably put them into the large-n models of this study (Cooley 2008).

receiving state, there is no room left for forces to fall under the purview of the ICC, even if they are committing crimes internationally. This exemption further emphasizes how important it is for every member of the agreement to feel justice is being served, because the states involved are the only ones who can try these crimes.

Building on this literature, a typology of jurisdictional control is the measure used in this dissertation to act as the key dependent variable to explain patterns in this dataset.

Typology of Jurisdiction

Jurisdictional control is the dependent variable for this study. The level of jurisdictional control creates three categories based on how much control the sending state has at each stage of the jurisdictional process. When creating the typology, investigation, prosecution and incarceration were considered. There are three levels in this variable, agreements that favor the receiving state, that favor the sending state, or have an even split between the two.

Concurrent Jurisdiction

Concurrent jurisdiction is an even split between member states. Agreements of this type give the sending state control in cases where only the sending state's territory, property or citizens is violated. With the converse control for the receiving state. The most imitated version of concurrent jurisdiction is found in NATO's SOFA.

If a crime is punishable according to the sending state and is committed by a member of the sending state forces, the sending state can prosecute. When a member of the receiving state commits a crime, they can be investigated and tried for a crime in the receiving state according to the receiving state's laws. These types of crimes include treason, sabotage, espionage. Members of the sending state forces that are subject to military law fall under the jurisdiction of the sending state, but any civilian members or dependents fall under the jurisdiction of the receiving state.

In cases where the jurisdiction is not clearly for one state or another the two states must work together. The receiving state and sending state are to assist each other in any investigations that are not already clearly split to one or the other state. If the sending state has custody of someone charged by the receiving state, they can hold that individual in custody until charged by the receiving state. Both parties are to notify each other of the disposition of all cases where concurrent rights are involved, and sympathetic consideration will be given to potentially waive

jurisdictional control if a request is given by the authorities. If the receiving state does not have the death penalty, it shall not be carried out in the receiving state, by the sending state.

There are some qualifications to the jurisdictional process to ensure that forces would be participating in a fair legal process. This includes an interpreter if needed and a prompt and speedy trial with charges clearly laid out. Many of the cases made after 1955 would model themselves after NATO's example to achieve an even split.

In concurrent jurisdiction military forces stay under the control of the sending state when only sending state property, citizens, or territory is involved, and the receiving state has jurisdiction over the civilians and dependents that come over with the military forces in similar circumstances. If the case qualifies for concurrent jurisdiction between the two states, the split in control is even between both. Both states can participate in investigations and must notify the other of progression in the cases. Individuals are guaranteed certain rights during their trial to ensure a fair process. The only restriction on one states' power over the other is the denial of the death penalty. That cannot be performed in the receiving state by the sending state if the law does not currently allow that in the receiving state. In all else, the jurisdictional split is even between the two states.

Figure 3. Concurrent Jurisdiction Characteristics

Investigation

- If only sending state property or citizens are involved, the sending state has jurisdiction
- If only the receiving state property or citizens are involved, the receiving state has jurisdiction.
- If there is a mix both states can participate in the investigation and must keep the other updated
- No receiving state nationals fall under the agreement.

Prosecution

- Sending state retains control in instances of treason, sabotage, and actions in the line of duty.
- No other restrictions on what types of cases can be prosecuted
- Sending state individuals are guaranteed certain rights during trial including access to witnesses, a translator, a lawyer and due process.

Incarceration

- Not as specific, generally allows sending state forces to be sent back to the sending state to serve their sentence.
- No death sentence can be carried out in a receiving state that does not have the death sentence.

High Control (Favor the Sending State)

Agreements that have additional considerations that grant the sending state more control than the receiving state are categorized as “high control” agreements. In some instances, this means that most crimes fall under the jurisdiction of the sending state unless they reach a certain level of severity, or that all individuals will remain in the custody of the sending state throughout the trial process. Some more extreme examples, most commonly seen in agreements made with the United States, grant pure exclusive jurisdiction to the sending state in all cases. These examples would fall under the “high control” category. These show that the sending state has received concessions and gained additional jurisdictional powers over the receiving state. To code an agreement as high control it needs to give more control to the sending state in at least one of the stages of the jurisdictional process.

Figure 4. High Control Characteristics

Investigation

- The sending state can have "exclusive control" over the investigation process, there is no need to consult with the receiving state when this control is granted.
- In other cases, "high importance" cases fall under the pervue of the sending state, no matter who is involved.

Prosecution

- If exclusive control is given to the sending state, all prosecutorial power goes to the sending state.
- In high importance cases, the sending state retains the right to prosecute all important cases at their discretion.

Incarceration

- Exclusive control means the sending state has complete power over the incarceration of forces.
- More nuanced agreements with high control may give the sending state specific instances where the sending state forces can be sent home instead of serving time in the receiving state.

Low Control (Favor Receiving State)

Agreements that grant additional jurisdictional control to the receiving state fall into the “low control” category. Every SOFA has a stipulation that the discussion of jurisdiction never involves the nationals of a receiving state that are not working for the sending state. The discussion of jurisdiction is solely focused on the members in force from the sending state. With these restrictions there is not as much variation in the “low control” agreements. But there are

still instances where agreements grant greater power to the receiving state. This can be an increased ability to have incarceration terms be served in the receiving country or be completed in the sending state's territory. Reducing the types of cases that fall exclusively under the control of the sending state, also grants additional power to the receiving state. All these stipulations give additional powers to the receiving state over the sending state fall into the "low control" category.

Figure 5. Low Control Characteristics

Investigation

- Similar to the setup for concurrent jurisdiction, but more consideration is given to the receiving state.
- In some cases the receiving state can hold accused sending state forces until trial.
- In rare cases the receiving state has full control.

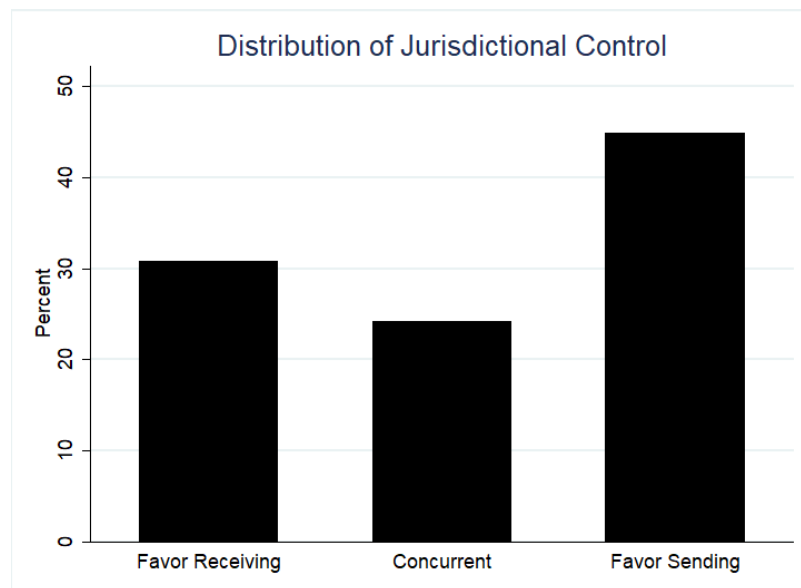
Prosecution

- Similar to the setup for concurrent jurisdiction in some cases, and in extreme examples full control can be given to the receiving state.

Incarceration

- Can work similar to the setup for concurrent jurisdiction with additional powers given to the receiving state. Some cases assert that sending state forces must serve time in the receiving state, or they cannot leave unless they are guaranteed to serve their sentence in the sending state.
- Extreme cases give full control to the receiving state.

Figure 6. Distribution of Jurisdictional Control



As the values for jurisdictional control variable increase the amount of jurisdictional control for the sending state increases. 0 means the receiving state has more control, which occurs at a similar rate to concurrent jurisdiction (jurisdiction value of 1). Agreements that favor the sending state are the most common. In total, agreements favor the receiving state about 25% of the time, are split evenly about 25% of the time, and favor the sending state 50% of the time. Data on SOFAs was collected to empirically evaluate this typology and identify significant influences on these outcomes. Data on SOFAs was collected and a variable identifying the split of jurisdictional control was assigned to each case. This data is used in the next three empirical chapters.

Data Collection

The first step of the collection process was gathering all the relevant agreements from the UNTC and the United States State Department. SOFAs are formally named “Status of Forces Agreements” or “Status of Mission Agreements”. Searching the UNTC, each agreement that contained a mention of the “status of” individuals was evaluated for fit with the current definition of a SOFA. If the agreement was military in nature and discussed forces visiting the territory of another state then it fits in the basic definition of a SOFA. If no discussion showed individuals visiting another state or the agreement had no military connection it did not fit into the requirements to be considered a SOFA. In many cases the title of a SOFA can vary, but the

“status of” is a general term for the jurisdictional discussion around forces, making it a good way to identify SOFAs. Some of the agreements were not officially written in English, but the UNTC did provide official translations of most agreements into English. For the remaining few that had no translation the relevant portions of the agreements were translated into English for this data set.⁷ The United States has a more consistent naming procedure for SOFAs, so pulling agreements from the State Department used this standard naming procedure to search for and identify SOFAs. To ensure a comprehensive collection of agreements the observation list was cross referenced with Braithwaite and Kucik’s data on the presence of foreign troops in a state with the ATOP database of military agreements including bases (2018). Any observations that these cross references suggested were missing from that dataset were found and added into the SOFA data.⁸ Most of the missing agreements were SOFAs that had been folded into larger multistate agreements concerning defense cooperation. And in one unique case, the SOFA between the United States and Cuba was included in the Cuban constitution, including the full discussion of jurisdictional control.

Of the agreements, 60 involved international organizations or a group of states, meaning that there was no individual sending state. These observations are included in the dataset but will not be included in the empirical models as their structure does not lend themselves to equivalent comparison of the key independent variables. 177 observations are made up of a single sending state and a single receiving state.

Sending States

In most of the basing literature the United States is one of the biggest, if not the only player, discussed as a sender of forces. But, looking at SOFAs negotiated around the world, there are many other players sending troops to other states. In total 33 states negotiated SOFAs to send their forces to the territory of another state.

⁷ One agreement in German was translated by Steffen Martin, one agreement in Arabic was translated by Ahmad Qabazard and 3 agreements were translated from French by Megan Phillips.

⁸ Most of the observations that were missing were multistate agreements and cases where the “willing” presence of forces can be debated. But all cases where it was determined that the forces were present in foreign territory with the full consent of the receiving state were included in the dataset. Some cases are still missing including Soviet era agreements between some communist countries. After corresponding with a representative from Politisches Archiv des Auswärtigen Amtes it is possible that copies of some of these agreements no longer exist.

Figure 7. Sending States

Sending State	Number of SOFAs	Sending State	Number of SOFAs
United States	98	Germany	2
United Nations	30	East Germany	2
Netherlands	22	African Union	1
United Kingdom	13	Austria	1
France	12	Belgium	1
Multilateral	9	Belgium	1
Australia	5	Burundi	1
Canada	5	Denmark	1
Gabon	4	Egypt	1
USSR	4	Finland	1
NATO	4	Latvia	1
Norway	4	Papua New Guinea	1
Singapore	2	Peru	1
Spain	2	Poland	1
Syria	2	Senegal	1
New Zealand	2	South Africa	1

The United States is the most frequent sender, but the Netherlands has 22 SOFAs where it has sent forces to another country. The United Kingdom and France also have more than ten instances where they have sent forces abroad. The United States is by no means the only state stationing forces abroad, and it is not only through international organizations like NATO or the UN that forces are sent out. International organizations frequently create their own SOFAs for members to send forces amongst each other. One of the multilateral agreements is the EU SOFA, creating a framework for jurisdiction in instances where forces travel between EU nations.

Receiving States

There is an expectation that the United States sends out the most forces, but there is no major expectation for which state is involved in the most agreements as a receiving state. The only solid fact in this case is that the United States does not host any troops in their domestic

territory.⁹ There is a broader range of states receiving forces. In this dataset 123 states received forces from other states.

Figure 8. Receiving States

Receiving State	Number of SOFAs	Receiving State	Number of SOFAs	Receiving State	Number of SOFAs
Netherlands	11	Benin	2	Panama	2
United States	10	Bermuda	2	Papua New Guinea	2
Kuwait	7	Burkina Faso	2	Rwanda	2
Multilateral	7	Burundi	2	Senegal	2
Denmark	6	Cameroon	2	Spain	2
Australia	5	Chad	2	Suriname	2
Germany	5	D.R.C	2	Switzerland	2
France	5	Djibouti	2	Timor-Leste	2
Gabon	5	Ethiopia	2	Tonga	2
Poland	4	Guatemala	2	Uganda	2
United Kingdom	4	Guinea	2	Yemen	2
Canada	4	Iran	2	Cote D'Ivoire	2
Cyprus	4	Iraq	2	Kyrgyzstan	2
Egypt	3	Italy	2	Belize	2
Guyana	3	Jordan	2	Niger	2
NATO	3	Latvia	2		
Romania	3	Lebanon	2		
Sudan	3	Lithuania	2		
Afghanistan	3	Mali	2		
Algeria	2	New Zealand	2		

⁹ There are some observations in this dataset where the United States is considered a receiving state. These cases concern US military bases abroad and the hosting of foreign troops in those facilities. These areas are considered US territory even if it is not within the US border. There are also cases where individuals are trained on US soil, but they are not an official military presence.

Figure 9. Single Instances of Receiving State

Receiving State			
Suriname	Finland	Malaysia	Seychelles
Angola	Gambia	Marshall Islands	Singapore
Bahrain	East Germany	Comoros	Solomon Islands
Bangladesh	Greece	Micronesia	Somalia
Belgium	Grenada	Mongolia	South Africa
Bosnia and Herzegovina	Czech Republic	Montenegro	South Korea
Botswana	El Salvador	Mozambique	South Sudan
Bulgaria	Estonia	Nepal	Swaziland
Cambodia	Honduras	Nicaragua	Tajikistan
China	Hungary	Oman	Tanzania
Columbia	Iceland	Peru	Thailand
Congo	Israel	Philippines	Trinidad and Tobago
Croatia	Japan	Portugal	Turkey
Cuba	Kazakhstan	Republic of Korea	United Nations
Czech Republic	Kosovo	Saint Lucia	Vanuatu
El Salvador	Libya	Saudi Arabia	Venezuela
Estonia	Malawi	Serbia	Yugoslavia
Zaire			

The two most frequent receivers are the most interesting in this data. The Netherlands is at the same time, one of the most frequent sending states and one of the most frequent receiving states. This can be attributed to their frequent establishment of mutual agreements. In these, the agreement does not specify an instance where one state sends forces, and another receives. Instead both states are assumed to be sending forces into the territory of the other.

The United States is the second most frequent receiver, but none of these cases involve the US hosting troops in their own borders. These cases center around US bases abroad. For example, the US military base in Iceland can host troops from other countries, but because the base is US territory, a SOFA is negotiated between the sending state and the United States concerning that state's presence on the military base.

There are 177 bilateral SOFAs that appear in this dataset as directed dyads. Of these, 32 are mutual agreements, meaning they appear twice within the dataset to appropriately indicate the directionality of the agreement. Once the universe of cases was identified each observation needed to be placed on the typology of jurisdictional control. The next section discusses how this variable is coded using material from each SOFA.

Walkthrough of the Coding Process

There are three types of jurisdictional control. Concurrent control is an even split, and in many is simply verbatim copied from the NATO SOFA. For reference, the jurisdictional section of the NATO SOFA is included in the appendix. For the other two categories, this section will detail example cases. Agreements that favor the sending state give more jurisdictional control to the state sending forces abroad, and agreements that favor the receiving state give more jurisdictional control to the state hosting those visiting forces.

Cases that favor the sending state have a jurisdictional division similar to that seen between France and Cameroon in 1969.

Article 3

“The personnel of the military mission shall be subject to the administrative and disciplinary regulations of the French Army. The Head of the Military Mission shall have, vis-à-vis the Mission’s French personnel, judicial, disciplinary and administrative power and shall vouch, vis-à-vis the Cameroonian authorities, for the discipline and actions of such personnel.

Article 6

In the case of offenses against the French or Cameroonian armed forces or military installations, property or equipment, the French authorities and the Cameroonians authorities shall take the same steps against persons subject to their respective jurisdictions as would have been taken if those offences had been committed against their own armed forces or their own military installations, property or equipment.” (UNTC 1970)

The head of the French military mission is given the preponderance of control in this agreement, controlling both investigation and incarceration of all their personnel. It is not full control, as they can surrender that control if requested by the Cameroonian High Command, but the agreement clearly favors the French administration and if French personnel were to fall under the jurisdiction of Cameroon both are asked to treat the other fairly. This agreement only gives jurisdictional control to Cameroon if France chooses. While it does resemble concurrent jurisdiction in Article 6, that situation only occurs with the consent of France. In this dataset this case is coded as 2 for jurisdictional control: it favors the sending state.

Agreements that favor the receiving state will have a structure similar to that seen in the SOFA between the United Kingdom and Kenya in 1967 (UNTC 1968)

- (a) Subject to the provisions of this paragraph:
 - a. the United Kingdom service authorities shall have the right to exercise within Kenya or on board any ship or aircraft of Kenya all criminal and disciplinary jurisdiction conferred on them by the law of the United Kingdom over members of the British Forces in Kenya and civilian component and dependents;
 - b. the courts of Kenya shall have jurisdiction over members of the British Forces in Kenya and civilian component and dependents with respect to offenses committed in Kenya and punishable by the law of Kenya.
- (b) Where both courts of Kenya and the United Kingdom service authorities have the right to exercise jurisdiction the United Kingdom service authorities shall have the primary right to exercise jurisdiction if:
 - c. the offence is an offence against the property or security of the United Kingdom, or against the property or person of another member of the British Forces in Kenya or civilian component or dependents, or Loaned Personnel or dependents of Loaned Personnel; or
 - d. the offense arises out of an act or omission done in the course of official duty.
 - e. In any other case the courts of Kenya shall have the primary right to exercise jurisdiction.¹⁰

¹⁰ There additional discussion of jurisdiction within the agreement but aligns with the NATO SOFA and its focus on cooperative investigation when both states have jurisdictional claims.

This case is a bit more difficult to parse than the previous example but remember to place this jurisdictional outcome in context with a concurrent agreement, where jurisdiction is evenly split between the two states. This agreement gives control to the sending state in cases on ships and aircraft, when only British property or personnel are involved, or in the line of duty. In all other cases Kenya has jurisdictional control, including anytime anyone enters Kenyan territory or breaks a Kenyan law. If this overlaps, then the structure mimics NATO, where both states work together to investigate and split control. Kenya has authority over all sending state individuals if they set foot on Kenyan territory, only if they break a Kenyan law on a boat or airplane does jurisdiction become split between the two groups. Kenya has a broader level of control when individuals enter Kenyan territory and even some control when those individuals stay on boats or ships. This agreement gives more jurisdictional control to the receiving state and would be coded as 0 in the jurisdiction variable for this study.

Cases of concurrent control strive for an even split between the sending state and the receiving state. Most often there are specific instances where only one state has control, when the law is unique to that state or when only people and property of a single state are involved. In all other cases, the two states must work together and communicate to investigate, prosecute, and potentially incarcerate those involved. It is not an exaggeration that NATO is frequently seen as the bastion of this style that has perfected the wording of this split. The contents of the NATO SOFA are included in this dissertation's appendix, but an example of how another state uses this style themselves should also be seen. A prime example is the 2006 SOFA between the United Kingdom and Canada. Their agreement simply states:

"The status of British Armed Forces personnel shall be governed by the terms of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces ("the NATO SOFA"), dated 19 June 1951, as supplemented by Article 8 of this Agreement"

Article 8 simply clarifies what the definition of forces are, stipulating that civilian employees of the UK do count as forces and agents of contractors do not. The split between the two states is exactly that of the NATO SOFA, and the only change is a minor one clarifying who shall be considered part of the "forces" (UNTC 2007,68).

Exploring the Data

This dataset provides information on sending and receiving states as well as jurisdictional outcomes and establishment dates for each initial SOFA. Figures 7,8, and 9 have shown the sending and receiving states, but there are other patterns to identify and explore to better understand this data and how it can be used in future endeavors.

The United States is the most prolific of sending states, making up almost half of the dataset used for the quantitative assessments in this dissertation. Of the 107 US cases figure 10 shows that the United States most frequently demands most of the jurisdictional control, but they do concede control in about a quarter of their cases¹¹.

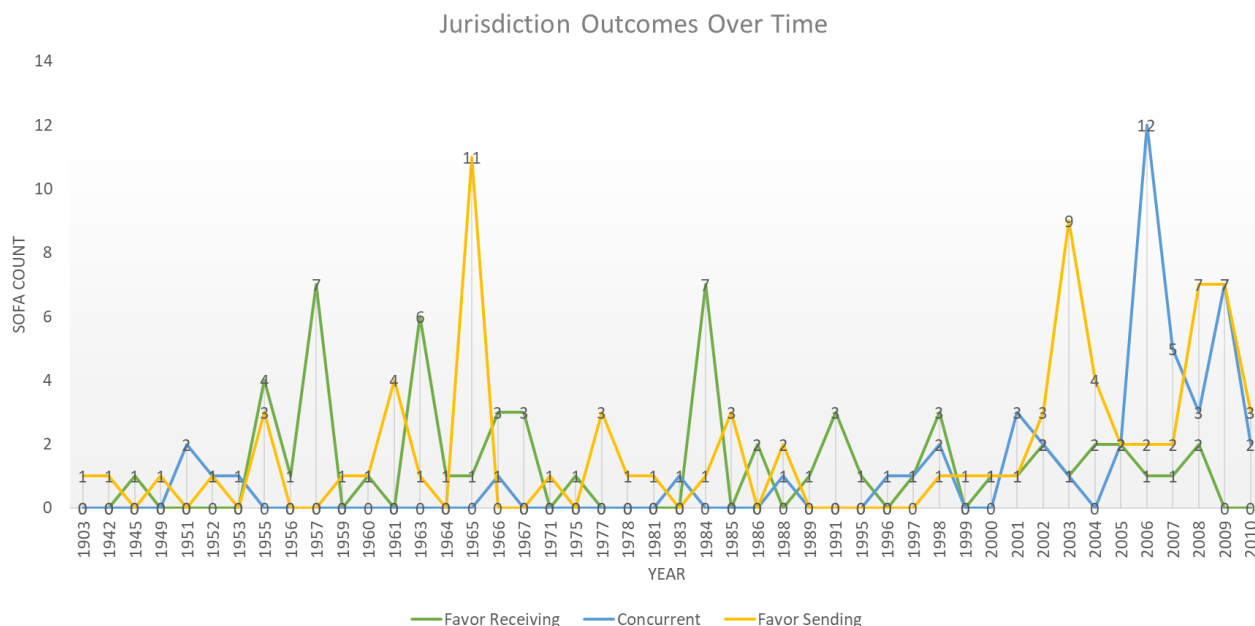
Figure 10. Distribution of Jurisdiction for US SOFAs

	Favor Receiving	Concurrent	Favor Sending
Number of SOFAs	27	28	52

SOFAs evolved dramatically after WWII, and over the years, new norms of structure and contents evolve. Figure 11 shows that over time, low control outcomes have small spikes, but are generally low, but the total number of SOFAs being signed increased after the 2000s. This fits with the shift towards lily-pad basing with many small agreements instead of a few large bases (Cooley 2008). Increasing use of SOFAs means that understanding what shapes these agreements and their contents is becoming more important.

¹¹ The United States is the sending state in almost all cases, so it can be assumed that outcomes that favor the sending state favor the US.

Figure 11. Jurisdiction Outcomes Over Time



The trend of increased SOFAs in the last 20 years is even more pronounced in figure 11. There is a slight downward trend in low control outcomes after the 2000's while there is a sharp increase in concurrent and high control outcomes. This chapter shows the need for empirical research on jurisdictional control and the divisions that occur within SOFAs¹². Figure 11 is limited to agreements where jurisdiction could be coded, but the appendix provides a complete list including observations that were not coded for jurisdictional control. This dissertation develops a typology of criminal jurisdictional control and introduces a new dataset of SOFAs. Finally, it applies this new typology of criminal jurisdiction to the cases within this dataset. The next three empirical chapters will develop and test theoretical arguments to explain why states would negotiate for these different jurisdictional outcomes.

¹² A full list of observations within the dataset for the 1903-2017 range is provided within the appendix. Not all of these observations are empirically evaluated here as they may contain multiple sending or receiving states, or the contents of the agreement is not publicly available.

Chapter 3 The Cost of Failure and Jurisdictional Control

What factors explain the balance of jurisdictional control in a SOFA? This chapter uses the cost of failure as the key explanation for why states would choose to give up any jurisdictional control. This chapter looks at what factors can make a state place more or less value on a SOFA by identifying what increases the “cost of failure”. States that pay higher costs when agreements are not made will place more value on establishing agreements and will be willing to sacrifice jurisdictional control over their citizens to create a SOFA. These costs are analyzed using logistic analysis to evaluate the directional effects of different value components and power on jurisdictional control.

States will seek to avoid paying a high cost and strategic value is a major source of cost. This chapter considers sources of strategic value to the cost of failure during a SOFA negotiation. Negotiating an agreement is an expensive task, with the time and effort being only one of the cost generating elements (McDonald and Bendahmane 1990). States have goals they are trying to meet, strategies they are trying to realize, and SOFAs are key pieces to achieving those goals. Failure to establish a SOFA potentially means failing to achieve those goals.

With the protection of citizens’ rights as the focal point of a SOFA, jurisdictional control is a key sticking point in the negotiation process (Levitt 1990; Voetelink 2015). States will only enter into agreements they believe they plan on complying with, meaning that if the jurisdictional outcome is not something they can accept, then states will not enter the SOFA (Chayes and Chayes 1993; Leeds, Long and Mitchell 2000). The following models evaluate the cost-benefit analyses states use when negotiating SOFAs; balancing the cost of conceding jurisdictional control against the cost of failure to establish a SOFA¹³. If states are only entering into agreements, they are willing to make, then states must balance their demands for jurisdictional control with how much they are willing to sacrifice to ensure the SOFA comes to fruition.

Cost of No Agreement

During SOFA negotiation there is an underlying desire for states to maintain jurisdictional control over their citizens. As stated in the US report on SOFAs the goal of these agreements is to protect the legal rights of their citizens (ISAB 2015). This goal is a constant concern for states, regardless of the cost-benefit analysis related to the agreement. In all cases, sending states are considering

¹³ In other words, the benefit.

how their citizens will be legally treated when hosted in a foreign country and receiving states are concerned with the protection of their own citizens. But what the changing jurisdictional outcomes has shown is there are some instances when one state will accept an agreement that strongly favors one state over the other. Something is making it acceptable for a state to give up jurisdictional control within a SOFA. Strategic value and power are major influences that could make the cost of failure too high for a state to accept forming a SOFA (Mearsheimer 2001; Fearon 1998). This chapter is focused on determining when the security needs of a state can overrule the baseline desire to protect the rights of citizens and push states to give up jurisdictional control.

Which factors can increase or decrease the cost of failure? Agreements that have a high potential benefit for a state create a greater cost if they are not established. Where conversely, agreements that provide little benefit for a state, carry with them a low cost of failure, giving a state little incentive to barter or negotiate to keep the agreement. For example, SOFAs are established to create a military base, provide training support, or to send forces for a technical or security purpose. This show of support and strength would produce a positive security outcome for a state hosting those forces and a strong signal of power for the state sending those forces (Morrow 1993). If the agreement falls apart, neither state receives the benefits of the agreement, and both pay the cost of failure. If the sending state in this example is a major power, the establishment of a SOFA would provide a negligible security benefit, meaning the cost of failure for the sending state is low. If the receiving state is a weaker state, maybe being threatened by a nearby conflict, then their potential cost of failure is high. The sending state would gain a negligible benefit in this case, but the receiving state stands to gain much more in military support from the sending state. The sending state has a *low* cost of failure, and the receiving state risks a *high* cost of failure if the SOFA is not negotiated and accepted.

While both states stand to pay some cost of failure, there is no requirement that both states will pay the same cost. Some states are in a better negotiating position than others, resulting in a difference in cost of failure for both states. If a state gains a greater security advantage because of a nearby conflict, compared to the sending state, they will place a greater value on establishing an agreement. When a new base is built in a receiving state, they will gain a major boost in their military strength and overall security, far more than the projected strength demonstrated by the sending state building the base. Even if the sending state gains a benefit by responding to the same

conflict, the receiving state is now the host of the military strength and has the physical security boost from the military base.

Altogether, this means that both actors will want to have as much jurisdictional control as possible but must balance this desire with the potential cost from failing to establish an agreement. The rest of this chapter will explore what factors can increase or decrease the cost of failure with a SOFA. High costs can mean states are willing to sacrifice the jurisdictional control they desire to avoid paying that cost. Whereas low costs mean states will simply walk away from agreements that do not meet their demands for control.

Existing Understandings of Negotiation

The legal literature on SOFA negotiation has identified the jurisdictional component as the most important aspect of SOFAs and has the biggest impact on receiving state politics. The understanding of NATO's jurisdictional split has been a focus as states desire to emulate the even split of control (Sari 2009). The term "official duty" has been debated in several court cases. Identifying when officers are acting on orders or officially representing their mission. Jenks focused on Iraq and the Abu Ghraib scandal. The jurisdiction portion of the agreement appeared to be favoring Iraq with only a stipulation saying that the US had jurisdiction when actions were in the line of duty. All actions, even those at the prison were still during a mission for those forces leaving jurisdictional control with the US (Jenks 2010). Others have evaluated court cases and how they have shaped the current understanding of jurisdiction (Shuck 1957). The *Aitchison v. Whitley* case and other related actions resulted in France's self-removal from the military infrastructure of NATO over disagreements with how jurisdictional control was allocated (Schwenk 1972). The continual debates over jurisdictional control have also been shown to wear down the relationship between the US and Japan (Gher 2002). This literature shows jurisdictional control is a salient component of SOFAs for those negotiating it and for those living under them.

The SOFA literature has identified jurisdiction as the source of most debate and discontent within instances when foreign forces are visiting another's territory. Connecting this dimension with the "cost of failure" considerations provides an understanding of SOFAs and identifies what increases or decrease that cost.

State Power Oriented Explanations

One factor that can influence the cost of failure is state power. State power has traditionally been associated with a better negotiating position, as states that have higher levels of power use their power to demand weaker states give in (Mearsheimer 2001; Waltz 1979). Placing that in the context of military strategy, more powerful states have more economic resources to spend. It is easier for them to reach out to other states or build bases in less developed territory. More military strength means they may have a reduced need to project their strength abroad or the state may not be interested in stationing forces abroad. Weaker states would not have the economic resources to pay for weapons development or training, or not have the military might to provide for their own security.

States that are considered “stronger” than the others involved in an agreement have the leverage to demand more control within the agreement. Stronger states will use their increased power to demand weaker states to submit to their demands. Stronger states will also associate a lower cost with failure to establish an agreement, meaning that if an agreement doesn’t meet their standard, they are more likely to walk away from an agreement rather than suffer one they do not approve of. (Mearsheimer 2001; Fearon 1998; Pfetsch and Landau 2000). It has been shown that states that are “needier” or attribute more cost to an agreement, will give up jurisdictional control to ensure an agreement is made (Lax and Sebenius 1986).

An exemplary demonstration of this process is seen when France sent forces to Guyana and negotiated a SOFA in 2004 for a series of joint military activities. France was far stronger than Guyana at that time having around 250,000 military personnel compared to Guyana’s 2,000. Their CINC scores vastly differed with France scoring magnitudes higher than Guyana¹⁴. France gains no major military benefit from this agreement. The resulting agreement reflects this, France retains more jurisdictional control over their forces. Patterns like this shape the first set of hypotheses.

H1: When the sending state is more powerful than the receiving state the sending state will have more jurisdiction control within a SOFA

H1b: When the receiving state is more powerful than the sending state, the receiving state will have more jurisdictional control within a SOFA.

¹⁴ France’s CINC .019 Guyana’s CINC .00004 (2004)

These hypotheses consider only the role of power in shaping jurisdictional control. This is an important hypothesis to test, as the role of power has been an important one to consider across international relations. However, power alone does not fully test different factors that change the cost of failure. Understanding what makes an agreement important for a sending state and for a receiving state is key in understanding the SOFA process and provides a viewpoint that has been omitted from previous studies of these agreements that have only approached it from a legal perspective.

To illustrate how different factors beyond military or economic strength can play a role in sending foreign troops let us look at an example. Iceland was a founding member of NATO and while it had no troops of its own it established many SOFAs with other countries and groups including NATO, Norway, and the United States. The United States was one of the hegemonic powers at this time, spending almost 32 billion USD on their military and had almost 4 million military personnel while Iceland had lacked a military entirely (Singer et al. 1972; NATO n.d.). Iceland agreed to help found NATO based on the concern that Iceland could no longer be neutral after seeing the Soviet Union attack several Eastern European countries (NATO n.d.). Iceland played a key role for those countries seeking to send forces to its Keflavík Air Base. Winston Churchill, quoting Karl Haushofer said Iceland is a “pistol firmly pointed at England, America, and Canada” (Clifford 1970). Several members of NATO have identified Iceland as a key player in controlling Soviet waters and airspace (NATO n.d.). So, entirely separate from the military or economic strength of the sending and receiving states, Iceland plays a key role in the military strategies of several sending states.

Iceland recognizes that participating in NATO benefits their position overall, but there are several bigger players, like the United States, that greatly benefit from utilizing the Keflavík Air Base. The location of the military base created an outpost that provided for easy transportation to a potential conflict and allowed allies to observe enemy forces easily. Iceland received increased security and training from the presence of visiting forces and the region was more protected. The agreement was important for Iceland as a tool to secure regional security, and it was important for the US and NATO as a location closer to an active conflict. The sending state(s) valued Iceland for its location, but they did have other options for where to build. For Iceland the decision to sign a SOFA was connected to national security and security for the entire European region. Iceland

placed more importance on their participation in the agreement than NATO or the United States did, meaning they were willing to make jurisdictional concessions to avoid paying the cost of failure.

As seen in the above example, there are several factors that can influence the “importance” of the agreement for the sending or the receiving state. In this study, importance means the strategic value of an agreement. When agreements contribute to a state’s overall strategic goals, more value is placed on the agreement and it is more important for that state. Putting this into the context of the cost of no agreement discussion, when agreements have more strategic value states will pay a higher cost if these agreements are not made. This cost will incentivize states to make concessions about jurisdictional control to ensure that the strategically important agreement is made. The indicators discussed below are tested to see at what point the strategic importance of an agreement outweighs the desire to protect citizens rights by retaining jurisdictional control. Strategic value is broken down into several different factors and then empirically evaluated to create a clear measure of importance. Some of these factors will only apply to the sending state and some only to the receiving.

If different levels of strategic value can determine how willing a state is to give up control within an agreement, then to evaluate this, this model will need to consider how each state determines importance. The motivations that encourage a state to send forces to another country are different from those that can push a receiving state to host troops. This means breaking up the evaluation of strategic value into three categories: factors that shape cost for the sending state, factors that shape cost for the receiving state.

The previous understanding of what increases or decreases the cost of military bases and the legal literature has established jurisdictional control as an important factor in understanding SOFAs. The basing literature has identified several factors as important contributors to the negotiation process and the SOFA literature has shown that it is not the building of a base that makes jurisdiction important, it is the presence of visiting forces. Analyzing bases is not enough. Any instance when forces are peacefully sent to another territory is a case where jurisdiction comes into play and this cost of failure analysis will be important. First, the concerns of the sending state will be addressed and then the receiving state.

Sources of Strategic Value

H2: When the sending state strategic value is high it will negotiate less jurisdictional control.

H3: When the receiving state strategic value is high it will negotiate less jurisdictional control.

Strategic value is measured in two way, the first is distance from the sending state. Establishing a SOFA further away from its own borders allows the sending state to project its strength further afield. New military strategies have emphasized the value of broadening the physical presence of military forces as threats are no longer limited to contiguous borders (Voetelink 2015). Access to areas where the sending state did not previously have a presence is one of the unique benefits of stationing forces abroad. Measuring this recognizes this source of value. Both states have their own concerns about external threats and make strategic considerations about how that strategy improves their own security.

The second measure of sending state strategic importance comes from the proximity of the receiving state location to conflicts involving the sending state. The sending state is considering how close their foreign hosted troops will be to their opponents and conflicts abroad (Pfetsch and Landau 2000). Having a closer position to their opponents will give them a strategic advantage by shortening response time and sending a costly signal of support. The receiving state will also be concerned by their own proximity to conflicts in general. This study strives to address this overlap by only evaluating conflicts that involve the sending state. The closer the receiving state is to conflict the greater the potential threat (Abadie and Gardeazabal 2003). One great example of this is the US-South Korea bases. When the SOFA was first established, the United States places importance on being near China, one of the major competing powers in the region. South Korea felt the base was important to send a signal to their nearby opponent North Korea. Both states have their own concerns over nearby conflicts. The sending states and the receiving state are both motivated to respond to their own opponents. The United States would pay a high cost if this agreement did not exist, losing a major foothold in the region and their ability to quickly respond to China. While South Korea would be concerned over the continued threat of North Korea if they

lost the military support of the United States forces. The presence of nearby conflicts and opponents are both contributing factors to the value the sending state places on the agreement.¹⁵

When one state has a high strategic value associated with a SOFA, they will be willing to make jurisdictional concessions to avoid paying the cost of failure. Sending and receiving states have their own considerations, but the relationship is the same.

Research Design

To address these hypotheses, logit analysis evaluates how these factors influence the jurisdictional outcomes predicted in hypotheses 2-4. The models in this study use a new dataset of SOFAs created and/or implemented in the post WWII style. 177 observations are included in this dataset ranging from 1903 to 2010¹⁶. SOFAs are the unit of analysis presented as directed dyad years with the sending and receiving state combination making up the dyad. If there are mutual agreements where the direction of the dyad may reverse, the observation is included twice to recognize the change in direction for the dyad. For example, the 2002 SOFA between the United States and France is a directed dyad. This observation has the United States sending forces to France and was signed in 2002. There is no indication that France is sending forces to the United States, so the SOFA is listed as a single observation with the US as the sending state and France as the receiving state. The majority of observations were established after WWII but some were negotiated earlier and then extended for continued use. Others were negotiated with a colonizer and then were renewed with a new state after an independence movement as seen in the US negotiations with former Caribbean colonies of the United Kingdom. No changes were made to the agreements beyond the name of the receiving state. They were included as they still fit into the long-term peaceful basing structure that became predominant after WWII, even if they were negotiated earlier.

¹⁵ A separate consideration is the presence of key resources in the host country. The sending state may take the presence of resources like oil or gas into the value they place on an agreement. Access to these resources can be influential but does not increase the security or achieve any military specific goals for a state. This consideration is debated but can potentially be a factor (Le Billon and El Khatib 2010). A separate model was run including the presence of valuable resources like oil or gas, but no significant effect was found. Other sources of strategic value were considered and found insignificant including receiving state stability and the region of the receiving state.

¹⁶ The full dataset includes 236 observations ranging from 1903-2017 but many observations are not suited for empirical assessment, either due to lack of independent variable information or because their member states are international organizations or multilateral groups, making measurement of the other relevant variables impossible.

The dependent variable for this chapter is jurisdictional control. Broken up into three ordinal categories. Three separate models are used to evaluate each outcome. Each model uses a binary indicator for the three jurisdiction categories presented earlier. The first model looks at jurisdiction that favors the receiving state, the second looks at concurrent jurisdiction, and the third considers outcomes that favor the sending state. A multinomial logit model was also estimated on the three-category dependent variable of jurisdictional control and the interpretation of the presented results is essentially the same¹⁷

Each model will include key independent variables that measure the relationship stated in the hypothesis and each model will include key variables an indicator is included for agreements with mutual structure as a control. This means that the agreement indicates that both states identified in the agreement are treated as sending and receiving states. There is an expectation that both states will be sending forces into the territory of the other, potentially affecting the jurisdictional outcomes of the agreement, without the considerations being discussed in this study. There is no formal distinction between sender and receiver, fundamentally shifting the meaning of the jurisdictional split in the SOFA. All models will also be clustered by year to account for the time trends in norms of SOFA behavior that the literature has suggested are present.

Power Independent Variable

For the test of state power differences CINC scores measure both military and economic power for the sending and the receiving state. This measure incorporates both military and economic factors that contribute to the strength of a state (Singer et al. 1972). This is the first stage of this analysis, creating the most basic version of the model predicting jurisdictional control. The three logit models include measures for state power, and a binary indicator if the SOFA is a mutual agreement. As mentioned above, the sending state is most often stronger than the receiving state. To ensure the clearest interpretation of the effect of power across all three models, CINC is represented by the difference between the sending and the receiving state power. Specifically, the sending state minus the receiving state's power is represented with *CINC Difference*.

¹⁷ These models can be found in the appendix.

Strategic Value Independent Variables

When signing a SOFA, the sending state has factors that contribute to their assessment of cost for the agreement. The sending state's considerations for the cost of failure are built on their expansion of power and the increased ability to address any existing strategic concerns. Each of these factors can contribute to how costly the agreement is for the sending state. First, the expansion of power can increase the cost of failure for the sending state. It shapes how beneficial the SOFA could be by broadening the military reach of the sending state. In this model, this variable is measured is called *Distance*. *Distance* measures the distance in miles between the capital of the sending state and the capital of the receiving state, logged to more accurately reflect the relationship despite the high unit values. States that are further apart provide a greater increase in military reach for the sending state than states that are close together. If the United States were to send forces to Canada, that SOFA does not provide a dramatic change or benefit for the US military strategy compared to distant forces. Forces in another continent like Australia could potentially shorten transport time, create a signal of force in a new region, or provide logistical support that the US does not already have. This distance measure addresses all potential benefits the sending state would receive from a SOFA with a faraway state.

The second measure of sending state benefit is proximity to current conflicts for the sending state. While general expansion measures nebulous benefit, a more direct measure of proximity to conflicts involving the sending state demonstrates the direct benefit the sending state receives. To create the measure, the previous ten years before the signing of the SOFA are included. The distance between the conflicts the sending state is involved in, and the receiving state is log transformed and recorded. The lowest value, in miles, over these 10 years is *Closest*. This measure is created using ICOW territorial data (Mitchell and Hensel 2007).

The receiving state is concerned with addressing its own lack of military strength. By hosting visiting forces they receive a boost in physical strength, while also sending a signal of external support. Knowing how valuable the receiving state finds a SOFA is based on how threatened they currently feel. To measure this the ICOW data is once again used, for their measure of hostility (Goertz, Diehl and Balas 2016). For the decade before the SOFA is signed the highest global hostility level is used to generate *Highest*. Higher values in this variable mean that for the

10 years before the SOFA, the world was experiencing more intense levels of conflict. This indirectly measures how threatened the receiving state feels as they negotiate a SOFA.

Control Variable

The variable, *Mutual* is positive when the SOFA suggests that both states will be sending and receiving forces over the course of the agreement. This can influence the jurisdictional outcome for negotiations, so it will be included as a basic control for all models. In addition, the models are clustered by year to recognize the changing norms in SOFA structure that develop over time.

Results

Table 1. State Power and Jurisdictional Control

	Favor Receiving	Concurrent	Favor Sending
CINC Difference	0.417 (4.185)	0.475 (2.570)	3.623 (2.857)
Mutual	-1.610 (1.099)	2.042** (0.736)	-0.084 (0.633)
Constant	-1.827** (0.610)	-1.534** (0.556)	-0.600 (0.334)
N	177	177	177

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

The results in Table 1 find no support for hypotheses one-a and one-b. The failure to find significance in Table 1 is interesting. The role of power in military alliances is a widely accepted one and the negotiation literature would argue that power influences the results concerning important dimensions like jurisdiction. On the other hand, these results argue that by itself power, is not a significant predictor for jurisdictional control. The next section will broaden the considerations and incorporate the other factors beyond power that can affect the cost of failure. Power does not appear to have any effect. This suggests that considerations like those seen in the earlier example of Iceland and NATO may have a stronger effect than a realist assumption would expect. Iceland was able to get a concurrent jurisdictional outcome despite having no military power to speak of and a comparably weak position compared to the US. All because access to their location for military bases was so vital for the sending state's military strategy.

Table 2. Sending State Sources of Strategic Value and Jurisdiction

	Favor Receiving	Concurrent	Favor Sending
Distance from Sending State	0.612 (0.786)	0.171 (0.205)	-0.058 (0.312)
Distance from Closest MID	-0.351 (0.448)	-0.128 (0.257)	0.945** (0.357)
CINC Difference	0.401 (3.458)	0.561 (2.840)	1.377 (2.560)
Mutual	-1.579 (1.206)	2.078** (0.740)	-0.375 (0.622)
Constant	-3.921 (5.427)	-1.866 (2.392)	-7.636 (4.026)
N	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 2 shows that mutual SOFAs are still significant and increase the likelihood of a concurrent jurisdictional outcome.

The significant results that these models find, come from the first model evaluating outcomes that favor the receiving state. There is a significant positive relationship between the proximity of conflicts and the agreements that favor the sending state. A significant relationship here means as the distance between the receiving state and the closest conflict increases, the likelihood of the sending state having more jurisdictional control significantly increases compared to concurrent and favor receiving outcomes. These results run opposite to what is expected. The source of value for the sending state leads to significantly more jurisdictional control for the sending state.

The distance between the sending and the receiving state does not significantly affect the jurisdictional structure of SOFAs. Proximity to conflict runs opposite to what is expected, but this can be due to of the bluntness of the measure. Power once again has no significant effect at any level of jurisdictional control and the benefit provided by expansion does not make the sending state concede control. These results suggest that there are factors that will make it easier

for the sending state to stop making concessions, but nothing that is significantly producing concessions.

Receiving State Strategic Considerations

Table 3. Receiving State Sources of Strategic Value and Jurisdiction

	Favor Receiving	Concurrent	Favor Sending
Highest Global Hostility	-0.743 (0.862)	-0.289 (0.565)	0.767 (0.517)
CINC Difference	1.681 (3.478)	0.812 (2.915)	2.740 (2.769)
Mutual	-1.550 (1.071)	2.067** (0.745)	-0.136 (0.619)
Constant	1.572 (4.186)	-0.185 (2.284)	-4.198 (2.474)
N	177	177	177

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Looking at Table 3, limiting the model to just receiving state concerns, the significance reverts to only *Mutual*, when looking at concurrent jurisdiction. Mutual agreements make it more likely for concurrent jurisdiction to be negotiated but beyond that there are no other significant predictors for jurisdictional outcomes. Again, this null result is an interesting one. When the receiving state risks paying a high cost for failure from a higher global level of hostility, there is no significant effect on jurisdictional outcomes. Furthermore, power still has no effect on jurisdiction even when accounting for global threat levels for the ten years prior to the establishment of the SOFA.

Conclusions

The nine models presented in this chapter demonstrate the unique characteristics of SOFAs, especially when attempting to evaluate them using traditional measures. State power is never a significant predictor within any of the models and in only a few instances is threat a significant influence on jurisdictional outcomes.

Contrary to the existing realist assumptions of power, the key structures within SOFAs do not respond to shifts in power or strategic value¹⁸. The global level of hostility is never a significant predictor for jurisdictional control and the distance from the sending state does not shift jurisdictional control either. This chapter by no means is the end of the tests that will be used to understand jurisdictional control, in fact, these results strengthen the argument that SOFAs are unique in their structures and additional considerations are needed to understand them. The following chapters will incorporate additional measures that affect the jurisdictional outcomes of SOFAs but there are potential extraneous factors that are producing these null results.

While it is disappointing that the null hypotheses could not be rejected within this chapter, these results are substantially interesting. Future expansions in available data or additional work to identify the purpose of a visiting force could provide new avenues for research on this topic.

¹⁸ Other measures that were tested and not presented because they did not produce significant results in any way included measures of oil and other valuable natural resources, regime types and similarity between the two states, former colonizer status, regime stability, former occupations and civil wars within the receiving state.

Chapter 4 Trust and Similarity

According to the realist arguments around state power both states entering a SOFA should demand as much jurisdictional control as possible (Mearsheimer 2001). As seen in the first empirical chapter strategic importance and state concerns over resources or state stability can be factors that influence the negotiation of these agreements. However, SOFAs do not cleanly fit into these expectations. Power and value-based theories on negotiation are centered on more traditional understandings of military agreements and strategy and while this information is important it does not fully explore the variables that play a role in our understanding of these agreements.

Trust between states is a separate consideration. When states are more trusting they will be willing to give up power and control in cases where, according to the previous chapter's argument they would want more. They do this because they trust the other state to behave in an appropriate manner. States can trust that their citizens' rights will still be protected to the same level, even without their own state being in control. This trust can be built through similarity in legal structures or in shared history.

The purpose of SOFAs is to protect the rights of citizens abroad (ISAB 2015; Snee and Pye 1957; Levitt 1990). Jurisdictional control is the central tenant protecting those rights. The easiest way for a state to ensure the rights of their citizens is protected is to maintain control over their citizens in criminal cases. Any concession of that control introduces potential uncertainty and confusion, putting forces' rights at risk. The first empirical chapter tested which situations could override this desire for legal protection and make states give up their ability to replicate the legal rights for their citizens abroad. This chapter adds additional context to understand what can make a state more willing to put jurisdictional control in the hands of another. The previous chapter looks at potential instances where the ends justify the means, situations where creating the SOFA is worth giving up that perfect control over citizen's legal rights. This chapter looks at another way to understand why a state would give up jurisdictional control, if they trust that even in another's hands the rights of their citizens will still be protected.

To test this, two sources of trust between the sender and the receiver are used, one that addresses trust based on direct interaction, and one based on assumptions of shared values or beliefs. Legal system similarity most directly tests the argument that the specific legal rights of citizens are the central focus of SOFAs. Different systems put different values on evidence, trial presentation

and witnesses and these similarities provide a comfortably familiarity in the legal process. A secondary source of trust in the legal process comes from shared colonial history and values. Similarity in colonial history or values creates a corresponding similarity in the value placed on certain rights or legal processes. Similarities of this type are a different source of trust, but one that is still fundamentally based on a mutual understanding in the value of ideals and values that make up the legal system of each state. Even when the shared colonial history was poor, it cannot be denied that both states are familiar with the legal systems of the other.

Previous Literature on Trust and Agreements

Trust in international relations has been a topic of extensive study. Trust is a new dimension through which to evaluate the anarchical international system. States must use some heuristic or method to make the decision to cooperate with allies, and trust provides that heuristic (Lebow 2013; Hollis 1998). Over the years, various operationalizations and conceptualizations of the idea have been proposed and tested (Michel 2012). Some researchers have focused on predictability as the source of trust (Lebow 2013), a belief in cooperation or correct behavior (Kydd 2005; Hoffman 2002; Rathbun 2009; Farrell and Knight 2003; Uslaner 2005), or familiarity (Uslaner 2005; Michel 2012; Pettit 1995; Lebow 2013). Familiarity creates trust by allowing states to know what to expect out of an agreement. When states know the values or structures within another state, they can trust that state to make decisions based on those values and structures, and most importantly predict outcomes (Booth and Wheeler 2007; Bluth 2010; Uslaner 2005; Michel 2012; Pettit 1995). This trust can be connected to a regime type, government structure, or even a legal system (Michel 2012; Pettit 1995; Uslaner 2005). Even when the familiarity comes from a negative source, like colonial history, familiarity still produces trust. The state knows the structures and values of the former colonizer and can understand legal outcomes based on these previous interactions.

Mistrust comes from the unknown, when one state does not understand the motives and values of another (Booth and Wheeler 2007; Bluth 2010). Previous research has found that the fear of the unknown is the largest source of mistrust between two states. That differences in culture (Marsella 2015), or objectives (Morthenthau, Thompson and Clinton 1985) can create mistrust as states mistrust until they can get over the us-versus-them mindset by understanding the motives of the other (Head 2012; Marsella 2015; Booth and Wheeler 2007; Bluth 2010).

In this study trust is demonstrated when one state believes that the legal rights of their citizens will be upheld when placed in the hands of another state. There are many proposed sources of trust in international relations, for this dissertation familiarity between two groups generates trust (Irving and Mann 1977; Jervis, Lebow and Stein 1985; Michel 2012; Pettit 1995; Uslander 2005). Trust itself is the willingness to place the fate of one's interests into the control of others (Hoffman 2002). By conceding jurisdictional control the sending state is demonstrating the trust they have in the receiving state to continue to protect the legal rights of sending state forces.

Legal Systems and SOFAs

Foreign legal systems can be just as difficult to navigate as a foreign language. There are assumptions and customs that someone may not understand and as a result, their journey through that system is more difficult. There is little literature in the field of SOFAs identifying differences in legal systems beyond comparative analyses of individuals going through the legal process. These works identify dissatisfaction, but do not analyze any effect of comparative legal system structure. Sciacca has identified US concerns over the treatment of minority members in foreign countries. If receiving states did not have built in protections against discrimination it was more likely for sending state personnel to not be treated fairly in receiving state systems (1973). The US-Germany SOFA has brought up concerns over habeas corpus, as it took 18 years for a major case to come before West Germany. The US Supreme court ruled on the issue and argued that any concerns over this would need to be brought up to the German government, and was not an issue the US legal system could address (Washington Post 1988; US Court of Appeals 737 F.d2 1984; Pressley 1989). Concerns over the right to due process and a speedy trial, concerns over the death penalty, and the general discussion of if or when jurisdiction could be waived and then reclaimed, all became sources of domestic dissatisfaction in this single case. But none of the existing studies connected systemic differences in legal systems as the source of this dissatisfaction. These issues have endured beyond individual cases, and to this day issues with these disconnects are still springing up (Svan and Kloeckner 2014).

All these cases demonstrate that first, concerns about protecting the legal rights of forces and citizens is still paramount. Second, within criminal jurisdiction, one state having too much control is not what creates strife and debate, it's the assumption of certain rights or procedures that may not actually be guaranteed within the SOFA. None of the previous cases were upset that

the allotted jurisdictional control was not respected¹⁹. Instead confusion about foreign legal procedure was the main source of strife. Reducing this confusion is an easy way to address those concerns about legal rights. When states are familiar in with the foreign legal system, it is not only easier to move through that foreign process, but any abuses can be easily identified, and the outcomes are more acceptable for everyone involved. SOFAs are a “novel legal experiment” creating a new type of legal status for military forces abroad and requires a high level of trust to even begin (Snee and Pye 1957 10). Trust comes from familiarity the ability to know that the expected outcomes will occur. One way to build this familiarity and subsequent trust is through the legal systems individuals will participate in when they fall under a SOFA.

Trust

Placing the legal control of citizens in the hands of another state already requires a high level of trust, but it is a fact that one state must give up some control. Trust is something that can make a state more willing to give up that control. The realist assumption that states will always demand the highest level of control does not explain the distribution of jurisdictional outcomes seen, and strategic value helps, but still does not tell the whole story. Trust explains why a state that is powerful and would not pay a tremendous cost of failure, would still concede jurisdictional control. Trust is a heuristic through which states can still guarantee that the rights of citizens will still be protected without having to explain every step of the legal process or demand full control and put themselves at risk of losing the SOFA entirely. Two sources of trust come from similarity in legal systems and shared colonial history.

Instead of the value-based argument around power and importance and its effect on cost, the topic of trust can create an entirely different outcome in the negotiation process. Trust is built between states by having information about the other’s behaviors and morals (Uslaner 2005; Larson 1997). When states understand what shapes the incentives and goals of another, they will trust that state if those incentives and goals align with their own. It has been shown that when these values do not align trust does not occur (Morgenthau, Thompson and Clinton 1985).

¹⁹ Some protest movements have attempted to frame their demands for change within SOFAs using this strategy, saying that their sovereignty has been violated or their right to try the case was violated. These arguments are considered particularly weak as no state violated the terms of the SOFA in any of these cases. And arguments that connect dissatisfaction with a violation of sovereignty are ignoring that each state willingly accepted and signed a SOFA with those specific terms (Kawato 2015).

This chapter evaluates two characteristics that states can easily use to evaluate how much they trust another state. Legal system similarity and colonial history give both states an easy way to evaluate how familiar they are with the legal process of the other state. This familiarity leads to trust which means a state can concede jurisdictional control, reducing the risk that they will pay the cost of failure, and potentially allow for other aspects of the SOFA to be negotiated more aggressively. In the examples above the states had different legal systems, and clearly had to put in more work to clarify assumptions made by either state about how the process was supposed to work.

Trust in Legal System

Legal systems signal how important certain moral structures are for a state and create a specific legal language that can be difficult for another state that uses a different language to understand. When states understand the legal system, they can clearly identify the goals of that system and know what incentives and purposes shape it. When states do not understand a system, they can begin to distrust it as they cannot identify what incentives motivate the actors within it, or what motives are behind formal decisions (Larson 1997). Similarity in legal system creates a situation where states can clearly identify the motives and purposes of the legal process when sending forces to a receiving state. Sending states have a clear signal that they can trust the legal rights of their citizens to be upheld within a similarly structured system. If a sending state can trust that their citizens' rights will be protected, the overall goal of a SOFA will be assured (ISAB 2015; Snee and Pye 1957; Voetelink 2015). With that guarantee they can focus on other parts of the agreement without having to demand more jurisdictional control.

Legal Systems

There are four types of legal systems that exist in the modern world: civil law, common law, Islamic law, and mixed systems (Powell and Mitchell 2007). Civil law stems from the Roman and Germanic systems and common law stems from the British (Powell and Mitchell 2007). Islamic law is built from the traditional religious laws of Islam, and mixed systems use a blend of any two of these groups. Each of these systems vary on the level of importance they place on evidence and what type of trial system they use (Orrantia 1990). Each of these systems have different assumptions about key aspects of the legal process. History has shown that concerns over differences on these issues has been a source of strife for those working through SOFAs.

For example, American's have been worried about France and the concept of "innocent until proven guilty"²⁰.

The civil law system is codified, writing down laws and rules to clearly define how the system should work. There is generally a written constitution in states with this system, and legal scholars can evaluate and suggest interpretations of laws. These interpretations can have a significant effect in this system and shape how laws are practiced. This system is more about defining what is allowed and clearly codifying provisions in contracts and laws to determine how the system works (PPPLRC 2016).

The common law system is one where laws and rules are not written down. The system works on the assumption that behaviors are permitted unless specifically forbidden. In most cases there is no written constitution and no particulars in the rules are created unless they are explicitly needed. Legal scholar analysis has little effect in these systems, and much of the legal process is based on unwritten commonly agreed upon rules (PPPLRC 2016).

Legal systems based on religion use the laws and dictates from the religion of the state to design their laws and shape their processes. Islamic law systems shape their rules based on the behaviors and system established in the Muslim religion. Commonly referred to as Sharia law, states that adapt this system pull from Sharia to help determine what behaviors should be discouraged or how crimes should be punished (Powell and Mitchell 2007).

Differences in the systems that states use to prosecute and investigate crimes create barriers and confusion between states. It is easy to see how individuals from a common law state would be confused and distrustful of a civil law system. States in different systems will have to be far more specific to ensure the rights of their citizens are protected; and more than likely this will mean demanding more jurisdictional control overall. States that pull from similar legal systems and use the same strategies will have a better understanding of the system they are working in. They will understand the basic structure of those laws and feel more comfortable working within that system. In contrast, states that have different systems will be confused, and not have faith or trust in how that system works (Orrantia 1990).

²⁰ Real or not, the fact that some believe that France works on a system of guilty until proven innocent simply demonstrates that because Americans are not as familiar with legal system France uses, they do not trust it and will question any verdicts.

In South Korea, US military personnel were tried in the established US military tribunal system, but this operates differently from the legal system of South Korea. The United States and South Korea use different systems, with South Korea using a civil law system and the United States using common law. Disjointed verdicts that are operating in good faith but lead to a judgement where the United States felt the system was working properly, but South Koreans felt that the law was not upheld. These rulings have created anti-American sentiment and distrust (Cooley 2008; Kawato 2015). In another case, when it was first established, NATO included a major basing presence in France. However, after several instances where France felt that the outcomes were not fair, elected to remove themselves from the integrated military structure for NATO (de Gaulle 1966). France uses a civil law system. Cases were handled according to the SOFA, allowing the sending state to handle those specific cases, but France did not use the same legal system. The resulting rulings felt unfair to France, and the state ended up removing themselves from the basing portion of the SOFA in response (Shuck 1957; de Gaulle 1966). Even when the SOFA gave jurisdiction to the United States, families of service members have brought up concerns with habeas corpus, discrimination, due process, and double jeopardy. In these instances the SOFA was followed to a tee but there a uncertainty or confusion about the receiving state's legal system²¹ (Snee and Pye 1957; Pressley 1989; Washington Post 1988). In these cases issues in jurisdictional control did not arise because one state had too much control, or was using coercion to shape outcomes, but because those operating within the agreement did not understand the foreign legal systems.

Thus, when two states have a similar legal system the sending state feels they can anticipate what will happen if a crime is committed. They understand the legal proceedings and feel comfortable in their ability to ensure the rights of citizens are upheld. They will not feel the need to have sole jurisdictional control. Even if the receiving state has jurisdictional control the outcome of the legal process would be the same. When these assurances can be made the sending state will concede jurisdictional control.

²¹ Many of these cases are explored in case studies in later chapters. Sources that further explore US legal decisions on SOFA debates include: Haughney 1969; Baxter 1958; Schwenk 1972; Rosenfield 2003; Wedgewood 1999)

Colonial History

A direct comparison of the legal systems of the sending and the receiving state is a strong test of the trust argument but does not test all ways in which states can become familiar with each other. A shared colonial history means that the two states were intensely connected, and the governmental structure of the formal colony was directly shaped by the sending state. There is a systematic relationship between the legal systems of the two states and the legal systems of the former colony are significantly affected by the former colonizer (Klerman et al. 2011). When this shared history exists (be it good or bad) there is a familiarity between the two and their legal systems. Legal system similarity is a major source of trust between two states, but a shared colonial history, where the colony and the colonizer have had repeated direct interactions between their governments and legal systems, is a more precise indicator of trust. The particulars of each state's legal system are known, and members of the colony will have directly participated in the legal system of the colonizer. Interactions like this dramatically increase the familiarity and understanding of previous behaviors for both states.

Trust is based on familiarity and it cannot be argued that colonies and their colonizers are not familiar with each other.

H1: When both the sending state and the receiving state have the same type of legal system, the sending state will demand less jurisdictional control.

H2: When the receiving state is a former colony of the sender, the sending state will demand less jurisdictional control.

Research Design

To test these two hypotheses, the same unit of analysis and basic model from the previous chapter is used. With the addition of measures for legal system similarity and colonial history added to test the new hypotheses. Legal systems are coded using Powell and Mitchell's categorization into four different types (2007). States use either, civil, common, Islamic or a mixture of existing categories. This nominal variable is used to measure legal similarity with a binary indicator. States that have the same legal system have a positive value.

Figure 12. Variation of Legal System Similarity Across Jurisdiction

	Favor Receiving	Concurrent	Favor Sending
Not Similar	31	17	14
Similar	30	31	75

Colonial history is measured using the supplemental colonial history ICOW data. To test hypothesis two the binary indicator is positive if the receiving state was a former colony of the sending state (Hensel and Mitchell 2007). The previously chapter's variables concerning strategic importance and issues are included as controls for this model. This includes measures of strategic value for the sending state and strategic value for the receiving state.

Figure 13. Variation of Colonial History Across Jurisdiction

	Favor Receiving	Concurrent	Favor Sending
Former Colony	6	3	7
Not A Former Colony	55	45	82

Table 4. Legal Similarity and Jurisdictional Control

	Favor Receiving	Concurrent	Favor Sending
Legal Similarity	-1.454 (0.839)	0.084 (0.517)	1.359* (0.613)
Highest Global Hostility	-0.487 (0.894)	-0.290 (0.552)	0.813 (0.559)
Distance from Sending State	0.751 (0.782)	0.145 (0.206)	-0.098 (0.293)
Distance from Closest MID	-0.489 (0.543)	-0.131 (0.257)	1.123** (0.383)
CINC Difference	2.839 (3.127)	0.888 (3.255)	-0.154 (2.397)
Mutual	(1.220)	(0.739)	(0.722)
Constant	-1.036 (6.259)	-0.336 (3.626)	-13.495* (5.364)
Observations	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5. Colonial History and Jurisdictional Control

	Favor Receiving	Concurrent	Favor Sending
Former Colony	1.729* (0.748)	-0.362 (0.549)	0.507 (0.662)
Highest Global Hostility	-0.308 (0.701)	-0.329 (0.597)	1.052 (0.561)
Distance from Sending State	0.456 (0.859)	0.168 (0.209)	-0.020 (0.329)
Distance from Closest MID	-0.346 (0.426)	-0.130 (0.256)	0.966** (0.370)
CINC Difference	4.570 (2.831)	0.619 (3.224)	0.665 (2.477)
Mutual	-0.937 (1.177)	2.043* (0.796)	-0.354 (0.678)
Constant	-2.027 (8.669)	-0.205 (3.831)	-13.157* (5.439)
N	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Results

Table 4 shows when legal system similarity is the key independent variable it significantly decreases favor sending outcomes compared to concurrent and favor receiving outcomes²².

Mutual agreements do significantly increase the likelihood of concurrent jurisdictional control but do not influence the use of any other jurisdictional outcome in comparison to favor sending and favor receiving outcomes. Finally, proximity to sending state conflicts is also a significant predictor for outcomes that favor the sending state. When accounting for trust, proximity to relevant conflicts still is a significant predictor for jurisdictional outcomes that favor the sending state. Finally, in the concurrent model mutual agreements do have a significant positive relationship with the dependent variable.

These results provide support for hypothesis one and suggests that distrust based on a lack of similarity in legal structure is enough to push states to demand more control when the trust is not there. Across the three models, hypothesis one finds support.

Table 5 shows that when accounting for colonial history between the sending and the receiving state the hypothesis is clearly supported. Table two shows that there is a significant positive relationship between jurisdictional control that favors the receiving state and a colonial history between the sending and receiving state. This is the only result that has shown an effect strong enough to give more control to the receiving state over the sending state forces. The concurrent jurisdiction model supports the consistent relationship between mutual agreements and concurrent jurisdictional splits.

Running contrary to the strategic value hypothesis, proximity to conflict which was used to measure cost of failure for the sending state, has a significant positive relationship with favoring sending outcomes compared to concurrent or favor receiving outcomes. This can be taken to mean that the hypothesis addressing sending state cost of failure considerations is not supported, or potentially, that measure is picking up on receiving state perceptions of threat as well as sending state threats.

²² The appendix includes models where the reference category was designated as concurrent jurisdiction to make interpretation clearer, but none of the results meaningfully change. So the lack of significance for favor receiving, and concurrent models across these chapters holds even when the reference category is adjusted.

Conclusion

Altogether the results in this chapter find evidence that the additional context of trust provides a more accurate understanding of what shapes SOFAs than just the evaluation of cost of failure. When additional context of historical interactions is integrated into the model the clearest picture so far is seen.

This suggests that even when there is a belief that the rights of sending state forces will be respected, that does not mean that the sending state will offer up jurisdictional control. Having trust merely broadens the range of acceptable jurisdictional outcomes for the sending state, it does not push them to give up more control in general. Connecting these results to the cost of failure discussion from the previous chapter, table 2 also shows that even when accounting for trust, the cost of failure still plays a significant role in shaping jurisdictional outcomes. These results have clearly shown that trust is shaping jurisdictional outcomes within SOFAs, but the variation across those outcomes shows that there is a good deal of nuance in how factors like trust shape SOFAs. Across these models it has become abundantly clear that SOFAs do not often behave as expected, and frequently the patterns that are identified are nuanced.

These findings support the trust literature and their expectations for the role of trust and familiarity in shaping international agreements. Trust generated through legal system similarity works because states recognize these similarities within each other. Powell and Mitchell have demonstrated that different legal systems have markedly different behaviors within the ICJ. This study builds on their evaluation of legal systems by finding that legal systems produce differences between states, not just between a state and an institution (Powell and Mitchell 2007).

Identifying trust as a good predictor for jurisdictional outcomes means that protecting the rights of citizens is the true goal of a SOFA and the correct way to understand motivations around their structure. Much of the political science literature around SOFAs looks at the sovereignty argument, connecting any changes or motivations around individual behaviors to the topic (Shuck 1957; Kawato 2015; 2010; Cooley 2008). If the central concern of a SOFA was sovereignty, then trust would not have any effect on the shape of the agreement. The role of trust emphasizes that protecting legal rights is most important. SOFA agreements, a fundamentally military-centric agreement, does not operate under the same theoretical assumptions of other

military agreements. Instead, SOFAs operate under a liberal understanding of trust developed through interaction and familiarity. These agreements are fundamentally shaping how states view each other, and specifically how they view others' militaries. The basic theoretical framework that has been used to analyze them is wrong.

As military strategy evolves and lily-pad basing becomes more popular, more bases will be created around the globe (Cooley 2008; Vine 2017). Accurately understanding what states care about when negotiating these agreements will help both parties better understand each other and produce outcomes that address their actual desires.

Chapter 5 Renegotiation and Changes in Jurisdictional Control

Introduction

Renegotiations, or reemphasis of jurisdictional divisions can create changes in the control level over time. This chapter will theorize and illustrate what creates these changes. What happens to the relationship between sender and receiver over time? What can make demands for change to the SOFA successful? This chapter presents a comprehensive assessment of SOFAs and how the negotiation process can change the division of jurisdictional control. Specifically, renegotiation in the context of long-term, repeated interaction.

The previous quantitative chapters have used large-n analysis to evaluate what characteristics of the sending and the receiving states influence the initial jurisdictional structure of a status of forces agreement. These findings have shown that the strategic value of a military presence within a receiving state, as well as the underlying trust between the sending state and the receiving state, can encourage the sending state to concede jurisdictional control to the receiving state. These large-n studies are limited to the initial establishment of the SOFAs, and at the very least are analyzing an inherently static relationship.

To understand the outcome of renegotiations, this chapter examines two factors: the coherence of receiving state demands for change, and the strategic importance of the agreement for the sending state. Receiving state pressure for change is a necessary condition for renegotiation but not a sufficient one. There needs to be a desire for change. As the sending state generally has a more beneficial jurisdictional outcome as shown by the data. The receiving state is going to demand change to gain more control.

Demands alone are not enough to produce change in a SOFA. These demands need to meet certain criteria in order to successfully gain more jurisdictional control for the receiving state and the cost of failure needs to meet the sending state's threshold for change. There are two dimensions that these requirements can vary on, immediacy of threat and the coherence of demands. When the receiving state addresses an issue of strategic importance and presents coherent demands the sending state will concede change. If these dimensions are only partially met full change will not happen, the sending state may recognize the demands, but no change will occur. There are four different outcomes to this causal process: jurisdictional change, behavioral change, no change, and sending state withdrawal.

Understanding Renegotiation Outcomes

The framework for the causal process in this chapter requires both coherent demands and strategic importance for an attempt at renegotiation to produce official jurisdictional change. In the renegotiation process there are three clear steps the states will move along as they attempt to renegotiate jurisdictional control.

1. The receiving state will become unsatisfied with the current jurisdictional structure of the SOFA.

This is usually the product of a crime or abuse committed by the sending state for which the receiving state demands “justice”. For example, in Japan in 2016, there was a military member arrested for drunk driving. The individual was arrested by Japanese police because he was driving off-base (Associated Press 2016). This event has followed a series of crimes attributed to US military personnel including a rape/murder two months prior and other cases of drunk driving, with some causing accidents and damage (Kageyama and the Associated Press 2016). The citizens of Japan have stated their dissatisfaction with the repeated crimes committed by forces of the sending state, both large and small (Associated Press 2016; Mie 2016). Interaction over time, and general dissatisfaction with the sending state’s ability to control and appropriately punish the actions of their forces, nurtures demands for jurisdictional change within the receiving state.

2. The citizens of the receiving state will mobilize themselves to express their displeasure with the current status.

Continuing with the Okinawa case in 2016, before the most recent case of drunk driving was even fully investigated, there were protests at the US embassy (Associated Press 2016). Protests are one of the most common ways receiving state citizens express their displeasure with the current SOFA and their desire for change.

3. The receiving state makes demands for change from the sender.

Once the renegotiation moves into this final step there are four options for how the sending state can respond, official jurisdictional change, behavioral change that temporarily appeases demands

for change, no change where the demands are ignored, and finally the sending state leaving the receiving state entirely.

The decision of the sender is based on two factors, coherence of demands, and the strategic importance addressed by the receiver. Coherent demands are those that are precise in the policy changes they want, and reasonable in the level of change they demand. Unclear or impossible demands are not considered coherent. A receiver is strategically important if it provides access to a location that addresses a significant threat or if replacing the receiving state and the services it provides is difficult. This can be because it would take a significant amount of time and investment. The sending state would have no quick alternative to address its strategic concerns if the receiving state were to leave the SOFA. If both conditions are met, the sender is likely to make changes to jurisdiction official. This is just a basic outline of each dimension, and the following sections will define these two concepts in more detail.

Coherent Demands

Demands for change that are clear and specific reduce the cost for change and make it more likely that the sending state will accept concessions to their existing jurisdictional control. A demand for change is a necessary requirement for SOFA renegotiation, but it is not a sufficient one. For change to occur the receiving government needs to express their demands to the sending state and the location must be strategically valuable. Demands that are more specific or have already had policies designed to address the demands, are easier for the receiving government to express to the sending state. With the increased cost of policy development already complete it is easier for the receiving state to explain their demands and show the sending state that the changes can effectively be made. Specific changes to jurisdictional control reduce the cost the sending state must invest to renegotiate a SOFA. If the receiving state has already invested the time an effort to show what policy changes address their demands for change, or have narrowed down the nebulous demands of the populous to a precise change, there will be less work for the sending state to do when renegotiation occurs (Huber and Shipan 2002).

Demands need to be both clear and realistic to the sending state. Demands that the sending state cannot realistically meet are, for example, demands that would require forces to disobey orders or complete actions that run counter to the mission. Anything that would violate the basic legal rights of those forces or would make completing the mission of the SOFA impossible are

unrealistic demands. Conceding to unrealistic demands would make the sending state pay a far greater cost than the cost of failure, no matter how strategically valuable the location is. Demands that are not realistic will, more often than not, either be ignored or result in the sending state leaving the negotiating table entirely.

Clear demands have identified a particular policy to change, and in the best cases, have already identified the changes to be made to that policy. A receiving state that has complaints with lenient sentencing, could demand that sentences be served in full within the receiving state. Identifying that they are unhappy with the verdicts of cases is a broad classification of the issue, but by identifying what specific changes the state wants, the demand has become clear. Demands that are too broad place a significant cost on the sending state to attempt to identify what policy changes would address the receiving state demands. As seen in the Japan mini case, there is no guarantee that any of those changes will actually solve the problem. If the receiving state can take on as much of the cost associated with policy identification and development as possible, then the sending state will be more likely to consider jurisdictional change in their cost-benefit analysis because those costs have been taken on by the receiving state.

One prime example of a demand that was too broad occurred in Greece in 1983 while they were negotiating a SOFA with the US. The negotiation process was extended after issues with jurisdiction became a sticking point. There was domestic pressure for change. Additionally, one of the diplomats negotiating the agreement had a family member killed by a service member because of a car accident that the diplomat felt was not prosecuted fairly because of the SOFA (Levitt 1990). There was significant pressure during the negotiation for jurisdictional change, but beyond a desire for change, the receiving state had not identified a clear policy change to address these concerns. Greece was a key strategic player for the US at the time, and the two had already entered into a series of agreements providing military support. Despite the intense pressure, the undefined push for something different only produced a temporary behavioral change (Levitt 1990). The US agreed to try and emulate fairer waiver use seen in other agreements, but after seven years that goal had yet to be achieved (Levitt 1990).

For receiving state demands for change to be coherent, they need to be both realistic and clear in their policy prescriptions. By meeting both these dimensions the receiving state has significantly reduced the cost for the sending state if they were to make formal changes to the SOFA.

Strategic Importance

Strategically important receiving states are those who address significant strategic concerns for the sending state, like shows of military strength or access to conflicts. Earlier chapters identified proximity to conflict as one way receiving state access provides strategic support. One factor less easy to measure quantitatively, is the provision of logistical support which makes it easier for the sending state to respond to issues quickly and with sufficient resources is of great strategic value. Strategically important issues are those that significantly shorten the response time for the sending state, both geographically and temporally. A SOFA can be important if it would take a long time to replace the current location. If there are no other viable receiving states in the region then it would take the sending state a significant amount of time to find a new location that meets their needs and addresses their regional strategy. This creates a high cost for the sending state if the current SOFA were to end. SOFAs that are in low strategic importance locations or could be easily replaced by nearby allies do not meet the requirements to be considered strategically important.

Referring back to our mini-case, for the United States Okinawa, the military bases in Japan provide important logistical support for the US. There is no nearby conflicts to Japan that the United States is engaged in, but having access to the air strips and seaports within Japan make it much easier for US Navy ships and move troops within the Pacific arena. Compared to US SOFAs with Iraq or Afghanistan that are clearly used to address conflicts in the region and do not serve any large logistical support goal.

Together, these two issues, strategic importance and coherence of demands create the 2x2 table of outcomes possible in these cases. Each of the four potential outcomes in this framework are represented within this chapter and have their own combination of coherence and strategic importance. Next, each of these outcomes will be discussed in more detail.

Outcome

Figure 14. Demands Versus Threat Outcomes

	Strategically Important	Not Strategically Important
Coherent Demands	Successful renegotiation of the SOFA giving more jurisdictional control to the receiving state	No reason for the sending state to stay, will just leave
No Coherent Demands	Sending state may pay lip service, but can ignore demands by saying they are unclear	No need to respond to demands, the sending state can ignore them or just leave the receiving state

When there are coherent demands for change and a strategically important receiving state then there will be official jurisdictional change in the SOFA. In these cases, there is significant public pressure for change, and their demands are clear and reasonable. Demands of this type have already done the time-consuming work of identifying policy changes and designing new structures for the SOFA (Huber and Shipan 2002). With a strategically significant threat making the existing SOFA valuable the sending state makes a cost-benefit analysis on if they should accept the change. The cost of identifying the policy issue and proposing changes has already been done by the receiving state, and the cost of losing the SOFA is high. Cases that fall into this category will produce formal jurisdictional control as there is a low cost to implement the change, and a high cost if the SOFA were to fall apart.

Coherent demands with a lack of strategic importance will produce a very different result. While the heavy lifting of policy development has already been done by the receiving state, the value placed on the agreement by the sending state is low. In cases with no/low strategic importance the sending state has other options to address their strategic concerns or the threat the SOFA addresses has become minor. In cases that fall into this category the sending state has no incentive to make any concessions to the receiving state, even if all the hard work has already been done. Any

concession of jurisdictional control would not be offset, so in these cases the sending state will simply accept the cost of failure and leave.

Incoherent demands, those that are muddled by other issues or are not realistic from a policy standpoint, produce a behavioral change in jurisdictional control. In these cases, the work of developing policy change has not been completed by the receiving state. Demands that are pulled from too many disparate groups fail to produce coherent demands. For example, concerns over environmental pollution, or land together with concerns over jurisdictional control make it difficult for a clear policy change to be identified. Alternatively, the receiving state can identify a clear policy change, but if that change is entirely unreasonable, then the demands are equally incoherent. Coherent demands work by taking the cost and effort of developing a policy solution away from the sending state. Policy suggestions that are impossible for the sending state to accept have not taken on this work. This leaves the sending state with the cost of policy development, fundamentally shifting the cost-benefit analysis for the sending state.

When a lack of coherent demands is paired with strategic importance the sending state's cost-benefit analysis results in a compromise in SOFA change. The cost of policy change is high, but so is the cost of failure if the SOFA were to dissolve. In these cases, a temporary solution is provided in behavioral change, where the sending state seeks to appease the demands, but no official change will occur. Cases like this are done to appease the drastic pressure of the receiving state but recognize that their lack of coherency means that an unofficial change will work. In practicality, outcomes in this category are usually called "reimplementations" to the SOFA. They may be formally written and stated as "amendments" to the existing SOFA, but their contents do not actually change the jurisdictional split stated in the agreement. Instead there are suggestions for changes in behavior, or ideas for how to improve current protocol. The sending state is addressing the increased pressure to prevent the loss of the SOFA but will not create an actual policy change because that work has not been done by the receiving state.

The final outcome occurs when there are no coherent demands from the receiving state, and there is no strategic importance in the SOFA. In the sending state's cost-benefit analysis the cost of failure is low, and there is also no clearly identified policy change provided by the receiving state. There is receiving state pressure for change, but it is muddled and impractical to implement at a policy level. Together with the low cost of failure the sending state has no real incentive to change

their behaviors at all. The continued pressure for change from the receiving state can continue, and the sending state will not pay the cost of failure. In these situations, the sending state is content to let the receiving state be displeased with the current arrangement, but there is no need for them to formally respond to this displeasure because the demands for change are unclear.

Finishing this mini-case of US-Japan 2016, the Japanese demands for change are a nebulous demand for increased regulation of troop behavior. There was a recent ban for drinking off-base, but cases of drunk driving continued during and after the ban (Associated Press 2016). So, designing a policy to somehow make US forces better behaved would be difficult to put into a formal SOFA policy, especially when US forces commit fewer crimes overall than the general Japanese population (Associated Press 2016). Japan is undoubtedly an important strategic location for the US Navy, but their demands are not coherent, and no work has been done to identify specific policy changes. As expected according to the established causal process, the demands for SOFA change here produced temporary behavioral change. The SOFA was actively being renegotiated in 2016 to augment the definition of the civilian component, to clarify who specifically falls under the SOFA in certain cases without changing any of the jurisdictional split (Associated Press 2016; Mie 2016). There was a temporary change in behavior with the drinking ban, but the SOFA did not officially change in any way.

Case Selection

This chapter pulls from the universe of cases where a SOFA was established to address an issue of high strategic importance. These agreements must have some expressed desire for jurisdictional change from the receiving state. Within this population of cases five instances of attempted SOFA renegotiation were identified. These cases were selected to vary on their strategic importance (at the time of renegotiation) and the coherence of receiving state demands.

Figure 15. Cases, Strategic Importance, and Coherence of Demands

Romania Cases	Step 1 Coherent Demands	Step 2 Strategically Important	Step 3 Outcome
Romania-USSR ²³ (Post Paris Treaty)	Yes	No	Sending state leaves
Romania-US 2016 (ballistic missile)	Yes	Yes	Formal jurisdictional change
South Korea Cases	Step 1 Coherent Demands	Step 2 Strategically Important	Step 3 Outcome
US-South Korea 2000	No	Yes	Re-implementation (Behavioral Change)
US-South Korea 2002	No	Yes	No Change
Germany Cases	Step 1 Coherent Demands	Step 2 Strategically Important	Step 3 Outcome
NATO Supplement 1995 (Specific to Germany)	No Coherent Demands	Yes	Behavioral Change
US-Germany 2011	No Coherent Demands	Yes	Behavioral Change

The United States in South Korea, the USSR and the United States in Romania, and the United States in Germany, with multiple attempts at renegotiation in each pairing. Each of these cases have moved through the process identified above. There was significant pressure for change to the jurisdictional division of control within the receiving state. All these receiving states were at certain times located in strategically important locations for the sending state and accomplished a vital purpose for the sending state's military goals.

²³ This case is not one of the main one for this study but needs to be walked through to understand the historical context for the US-Romania case.

Each case had significant domestic pressure for change at some point during their participation in a SOFA. Nationwide protest movements occurred in South Korea and Romania, while Germany had less coordinated but no less expansive protests during their SOFAs tenure. On top of protests, South Korean politicians integrated demands for change into their political platforms, and in Romania issues over the presence of foreign military forces has been an issue deeply connected to presidential politics since Romania became independent. These cases shared more than just pressure for change.

Each state also provided significant strategic value at some point for the sending state. Romania, during most of the time when it hosted military forces, served as a vital communication point between the USSR and Europe, or as a block against Russian encroachment into Europe. South Korea served as a vital protection against the advance of communism, and over time became a transportation point to protect against China and North Korea. Finally, Germany has been a long-term source of stable logistical support within Europe. This support not only strengthened NATO, but more recently has served as a key point of support for conflicts within the Middle East.

For each case the study will first identify any relevant background information needed for context. This includes the history surrounding the SOFA including its purpose and structure, and any additional information that shapes how sending state forces would interact with the receiving state. Then, the location of the case in the 2x2 table will be identified and explained, identifying what demands for change were made, how they were expressed, and how clearly they were presented. Finally, the outcome of each case is identified and evaluated within that same 2x2 framework of coherence and strategic importance.

Romania

Romania has peacefully hosted visiting forces on and off since the end of WWII. The following cases identify key moments where Romania demanded jurisdictional change. First, they demanded change from the USSR and then subsequently from the United States, with different levels of success. These two cases demonstrate the role of strategic importance in successfully demanding jurisdictional change.

Figure 16. Timeline of Romania Leadership

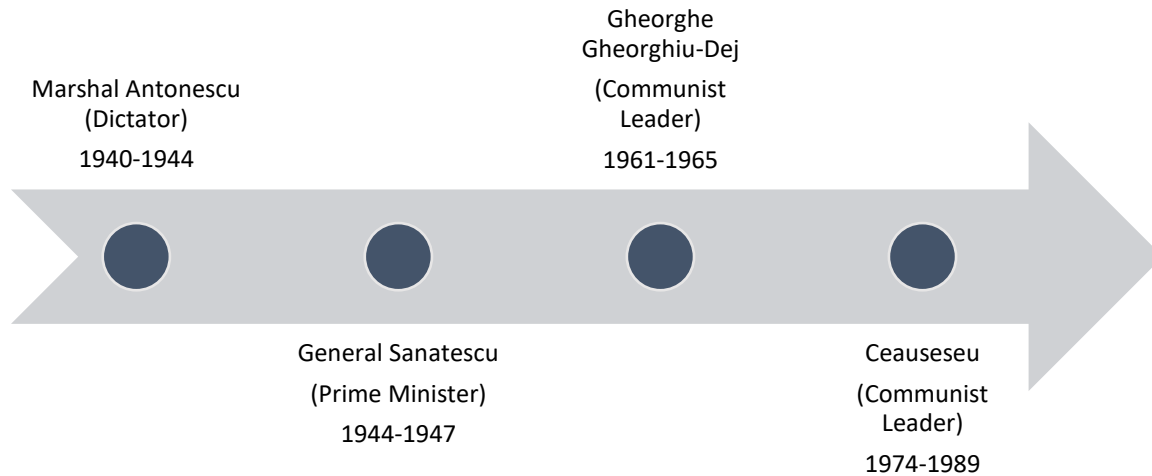


Figure 14 is a timeline of Romanian leadership, representing each of the main leaders that ushered in significant political change for the state. Included in each point is the name of each leader, the regime type they presided over, and the years they held executive power. This timeline gives a framework through which one can understand how the historical progression will go within this case.

Historical Context

During World War II Romania was initially on the axis side, allied against the USSR and working with West Germany (Falls 1993). They were a key strategic location for the axis with their eastern European location preventing the westward expansion of the USSR. In 1944 the dictator Marshal Ion Antonescu was overthrown by General Sanatescu and the communist party established control of the state (Crowther 1989). This flipped which side of the war Romania was on, ending their relationship with Germany and increasing their ties with the USSR. To formalize this switch Romania signed an armistice with the Soviet Union and started participating in their military maneuvers (Florin Hostiue 2014; Falls 1993; Crowther 1989).

As part of their role in the Soviet alliance Romania was used as a key connector with more western allies. The state was used to transport troops into western states like Hungary and East Germany as well as maintaining communication between Austria and Moscow (Falls 1993). Romania held a unique position within the communist bloc as they were the only state to previously be at war with the USSR. Combined with their weaker communist party, Romania had a very tentative relationship with the party line despite the intrinsic value created by their location (Florin Hostie 2014).

After the end of WWII in 1947, the Soviet Union signed the Paris Peace Treaty which negotiated a peace between the Axis, and the Allied powers. Because of this peace treaty, the USSR could no longer treat Romania like a state at war (which had allowed for their previous military presence). Instead they had to be willingly hosted by Romania. Once the Paris Peace treaty ended the War, the Soviet Union was required to have a SOFA, if they desired to remain in the independent state of Romania. Creating this SOFA was acceptable because remaining in Romania was vital for the strategic goals of the USSR at the time in 1957.

The following pages will show how Romania was able to execute a political and cultural campaign that pushed for jurisdictional change in their newly established SOFA and within a year Soviet forces were removed entirely from Romania. Initially a key logistical support point for the USSR, Romania's importance declined because the Soviet Union's strategic goals in Europe evolved to focus on other elements as the Cold War began. A long-term protest movement created domestic pressure while the executive clarified and refined demands for independence and the removal of visiting forces. All the costly bureaucratic work was completed by Romania, but at the time of their demands there was no high importance threat addressed by access to Romania. With no benefit coming from the SOFA, conceding jurisdictional control even if the policy had already been identified, the cost of failure was minor enough for the USSR to accept.

The rest of this section will walk through both Romania cases and examine how each case moves along the causal process. The decades-long anti-communist protest movements and the connections they drew between visiting forces and communist oppression, form the basis of step one. Romania's key location between the USSR (or Russia) and Western Europe shapes how imminent the threat.

Pressure for Change

Two factors spurred domestic demands for change, the Red Army's behavior while present in Romania, and the Soviet Union's punishing policy of "reparation" for previous antagonism between the two states. The USSR and Romania already had a strained relationship when they entered a SOFA in 1957. Romania was the only Communist Bloc state that had previously been at war with the Soviet Union and the two were on the opposite side of WWII.

The presence of Red Army troops within Romania for the last several years was viewed as a foreign occupation despite being allies, because of the continued disconnect between the people and the communist party. The army made several unsuccessful attempts to win over the local population and the continued presence of troops was needed to ensure support for the Soviet Union within Romania (Florin and Hostie 2014; Crowther 1989). The continued presence of Red Army forces, combined with the very recent history placing the two groups on the opposite side of WWII, created a siege-like mentality toward the Red Army instead a peaceful hosting of troops (Crowther 1989). The Soviet forces were viewed as alien forces, not connected with Romania and essentially occupying the state even though the two groups were technically allied. The Red Army forces were not on their best behavior when occupying the state. There were many crimes committed by the visiting forces and in many instances these crimes directly victimized the civilian population of Romania. These crimes included rape, murder, destruction of property, and robbery (Bekes et al. 2015). Records indicate that these crimes were not limited to the able bodied or those that could defend themselves. There are recorded instances of the elderly and religious faculty being subjected to the crimes listed above with no true punishment meted out on their assailants (Bekes et al. 2015; Mitroiu 2014).

There was no preexisting positive relationship between the two states. To preventatively address any discontent, the USSR sought to weaken the Romanian economy as a punishment for previous enemy status. They continued to attempt to win over the Romanian public (Florin Hostie 2014; Crowther 1989; Falls 1993). The strained relationship was not helped by the damage the Soviet Union placed upon the Romanian economy and general population. When Romania switched sides in WWII and joined with the Soviet Union, the USSR demanded economic reparations in the form of currency and supplies (Falls 1993; Crowther 1989). Despite becoming an ally Romania was still punished for formerly opposing the USSR.

With this fraught relationship it is easy to see why Romania had a rebellion movement against the Soviet occupation. Romanian citizens used a strong sense of national identity and independence to sustain one of the longest anti-communist rebellions against the Soviet Union (Falls 1993; Granville 2009). This rebellion contained multiple groups operating separately to protest against the Soviet presence up until the 1960's. Many sustained their presence by hiding their operations in the Carpathian Mountains to prevent military elimination of their operation (Granville 2009). The anti-communist rebels created a sustained anti-communist pressure that connected their movement to a desire for independence within Romania and the Romanian identity as a sovereign nation. These values were sustained despite the presence of foreign troops, and in turn, were inextricably linked to the presence of foreign troops.

For the first of the two independent variables there was a clear demand for change. Demands for change were placed in the context of a demand for sovereign control over Romanian territory. The issue was with a lack of enforcement from Soviet command. Shown in direct reports from the time, Romanian citizens frequently had to stop attacks and prevent crimes committed by visiting forces (Bekes et al. 2015; Mitroiu 2014). In these cases, the visiting forces would be brought to the attention of Soviet command and no punishment was dealt out. The lack of punishment further reinforced the us-versus-them mentality that ran through their relationship and the citizens of Romania frequently demanded more enforcement of laws from the Soviet Union.

In the terms of the 2x2 table of independent variables, the demands for change are clear. Romania was asking for a behavioral change from the Soviet Union. Asking them to enforce the existing rules more strictly but combined with the low strategic importance of their location at the time, this potential cost was too high.

Strategic Importance and the Sending State

Once the Paris Peace treaty ended the War, the Soviet Union was required to have a SOFA if they desired to remain in the independent state of Romania. Creating this SOFA was acceptable as remaining in Romania was vital for the strategic goals of the USSR at the time in 1957. Signing a SOFA was a new occurrence for the USSR, as they were only mandated after the Paris Peace treaty established Romania as an independent state at peace with the Soviet Union. The norms of treaty compliance and the process of cost-benefit analysis for continued compliance

was a new one. Rather quickly the USSR realized that paying the cost of maintaining the SOFA was not worth the benefit it provided, especially as the strategic landscape evolved as the Cold War became the focus of USSR global strategy.

Despite Gheorghiu-Dej's best efforts the massive anti-communist protests that were rampant throughout Romania were not unnoticed by the Soviet Union. He was successful in underrepresenting their relative size and depth, but their presence was still noted. The Soviet Union used the Red Army forces to reemphasize their control over the state (Crowther 1989). This increased Red Army presence did not ingratiate the Soviet Union to the Romanian people. As discussed above, military forces frequently abused citizens and property and the USSR continued to economically strain the state. (Crowther 1989). This increased pressure only raised the cost for the USSR to remain in Romania but their ability to address important threats was actively declining²⁴.

At this point, Romania was no longer strategically valuable to the sending state. Before Romania was needed as a key communication and logistical support point for the USSR, now the conflicts had died down. The USSR was focusing on other issues as they entered the 1960s their focus had shifted from Europe to Vietnam and Cuba. The supply-line created by Romania was not vital to addressing the current strategic concerns of the nation. Diplomatic cables and other correspondence from the time suggest that the USSR was using a withdrawal from Romania to provide more capital. They wanted to keep Soviet forces in other European states, making the cost of failure extremely low (Verona 1990). Members of the US State department at the time, placed such low importance on the decision they did not remember it happening, when asked by an interviewer (Verona 1990).

During the Cold War the USSR focused on their proxy wars and Space Race research. Romania no longer held a key strategic location to support these initiatives. Initially the SOFA between Romania and the USSR was created because the USSR could not comprehend paying the cost of failure if they lost access to Romania. It was a key logistical link to provide material support to other Soviet states to the west, including Poland, East Germany, Hungary, and Austria (Falls

²⁴ Unfortunately, finding direct comments from citizens and leaders about dissatisfaction with Soviet forces is difficult to find. Historically, statements of that sort were met with severe repression from the Soviet Union. Public statements detailing events or decisions are not available, so patterns of dissatisfaction from what reports exist are all that can be used (Verona 1990; Falls 1993; Granville 2009)

1993). Before the establishment of the SOFA the USSR could address demands for change using coercive power. With the signing of the SOFA, the USSR now needed to balance the cost of failure with demands for changes in jurisdictional control.

When confronted with the demands for jurisdictional change in how crimes were prosecuted the cost of failure for the USSR was low. Romania demonstrated consistent demands for change in the years leading up to the establishment of the SOFA. This pressure continued after its creation. The Soviet Union was reluctant to give up jurisdictional control and as the year progressed Romania became less and less capable of addressing important strategic issues. Instead of negotiating changes in behavior or jurisdictional control the USSR decided to leave. Statements from Moscow at the announcement of the troop withdrawal and the subsequent end of the SOFA, simply emphasized the political capitol it would gain by leaving Romania²⁵ (Khrushchev 1958). As stated above, the decision to leave was not one that increased goodwill for the USSR. Romania was already so close to the USSR that the minor movement from the borders of Romania back to the Soviet Union was of little importance (Verona 1990). While public statements may argue that it was to appease the US or at least create a more positive situation in Europe, it is clear that something else was pushing the USSR to make a concession they had never made before. Romania was no longer strategically vital, and there was no significant benefit from their decision, despite the high cost to move all those forces. The domestic pressure for change is one element that has been left out. This explains why the Soviet Union so quickly soured to the idea of a SOFA and the byplay between themselves and Romania that it created.

Long-term pressure for change, specifically for the USSR to change its enforcement patterns, did not work to produce behavioral change once Romania was no longer strategically valuable. In fact, by 1958 Romania provided a benefit if the Soviet Union fully withdrew its forces and never attempted to change its behavior. Without the key element of strategic importance, Romania had no leverage to demand change, no matter how clearly they shouted.

²⁵ While not a statement addressing the pressure for change presented by Romanian citizens, this statement does support the ongoing cost-benefit analysis of the Soviet Union and their choice surrounding SOFAs.

Romania and the United States

First Case

Having a military base in Romania was important for the United States to gain a closer transportation point to the Middle East. The first round of US forces was stationed there in 2001 (Careberry 2014). The Romanian base fit into the evolving modern military strategy of the United States known as lily-pad basing. By creating multiple smaller bases instead of a few large bases, the cost of losing the base is reduced while all the benefits like transportation are still present (Lutz 2009; Cooley 2008; Gillem 2007). The SOFA established provisions for a long-term base for the US to use to host troops, while providing a signal of economic and military support to Romania. Romania received an additional benefit beyond these signals, as they were seeking to join NATO during this time period. Having such a costly signal of support from the United States would help their bid to join the regional organization (Berdila 2005). The military bases themselves were in rural portions of Romania so there was no immediate concern about direct interactions between Romanian citizens and visiting forces (Vergun 2017).

Initially the US-Romania SOFA gave full control to the US, but after Romania joined NATO in 2004, Romania became a participant in a multilateral agreement with the US that allowed Romania to have more control over any NATO forces that may be visiting in their territory. Now, if a crime involving NATO forces resulted in harm to Romanian citizens or property, Romania could participate in the investigation and the trial could be held in Romania. It was a dramatic change from the lack of power Romania had with their bilateral agreement with the United States. Comparatively, Romania could see the inequality present in their bilateral US agreement. Coupled with the history of USSR visiting forces, the idea of a fair split of jurisdictional control was a drastic change and showed Romania that forces could be hosted in Romania while still retaining Romania legal power over those forces. This would address many of the long-term concerns and issues that citizens had had with Red Army forces and that could potentially develop with US forces.

Over the years the conflict in the Middle East continued to be an important issue for the United States, but the strategic importance of the threat began to wane. In 2001 the 9/11 attack was recent and article 5 had been invoked requiring NATO members to defend one of their own. By 2005 the intensity had waned, and article 5 was no longer in effect. Russia had begun to make

moves to grow in power, becoming a threat that needed to be addressed by the United States. The United States desired to expand their military presence within Romania including other foreign forces within their bases and to start a training ground.

2004 was a presidential election year for Romania, and on November 28 Ion Illiescu was replaced with Trian Basecu. Ion Illiescu was from the Social Democratic Party and had served as an executive in Romania since the fall of the USSR in 1989. His tenure was marred by decades of corruption and a continued connection to communism as Ion Illiescu was formerly a communist party leader (Hitchens et al. 2020; Reuters 2009). With the rise of Trian Basecu there was a major political shift in Romania, from communist leadership to a democratic party leader. Trian Basecu ran on improving and strengthening the relationship between Europe and Romania, and in particular, the triadic relationship between the US, the UK and Romania (Hitchens et al 2020). He ran a campaign of anti-corruption, and a desire to make Romania a member of the European Union.

Pressure for Change

In 2005 Romania, now cognizant of what they had comparatively given up in jurisdictional control as new members of NATO, was able to clearly demand increased jurisdictional control. The historic relationship between Romanian citizens and visiting forces had created an inherent distrust for the proper legal treatment of visiting forces. But, while there is a general desire for increased control within Romania, the demands had not become coherent. There are no clear issues that protests rally around, or any officials calling for specific changes. In fact, the leader at the time, Trian Basecu sought to increase the positive relationship between the United States and Romania and demanding increased control from the United States would make it difficult to strengthen that relationship (DoS 2019).

Bilaterally the United States still maintained exclusive jurisdictional control over their visiting forces. However, because of the expansion of many of the bases instead of just US forces, many facilities became hosts of NATO operations. With this shift, these NATO facilities fell under the purview of the NATO SOFA. This gave Romania increased exposure to concurrent jurisdiction and allowed Romania to see what specific changes they wanted to see occur in the future.

Basecu lost the presidential election in 2004 and was succeeded by Adrieian Videanu, a liberal democrat. The newly elected president had much to gain by winning a negotiation victory with

the United States. And as a liberal democrat the party leader had a much clearer understanding of the negative perception of Soviet forces within Romania. Adrian Videanu was the first executive to not have previous ties to the communist party (Hitchens et al. 2020). Combined with the new understanding of how concurrent jurisdiction could be implemented while addressing the historical concerns over legal abuses from foreign forces. Finally, there was a clear understanding of the changes that citizens wanted and an executive who could take on the bureaucratic cost of expressing these desires to the United States.

In conjunction with the new executive administration, there was a high-profile death attributed to a US Marine that occurred in 2004. Prominent rock musician Teo Peter was killed when his taxi was struck by an embassy vehicle driven by a US marine. The case increased tension between the two states. The case itself remained in the public consciousness as the marine was court-martialed (2006) and settled with the family but paid much less than was considered appropriate (2007)²⁶ Especially as the individual himself was not the one to pay, but the US government itself decided an amount to pay out because the diplomatic agreement would not allow for the individual involved to be required to pay responsibility (Maciu 2015; The Guardian 2010²⁷). Demands for appropriate legal punishment began to arise, and just as an executive was present who's party connected the presence of foreign troops with legal abuses. President Videanu spoke with President Bush during a NATO summit and suggested the US should create a solution to the issue as soon as possible (Paul 2008). By the time of the NATO summit, specific issues in the strictness of the US military tribunal and how much responsibility the US felt it had over the incident in general were widely discussed (Paul 2008; The Guardian 2010). Issues with how the blood alcohol test was administered, the general verdict in the trial, and the following civil trial were all identified as key sources of strife within Romania (Paul 2008). Unfortunately for the US's negotiating leverage these demands occurred just as a major NATO summit was occurring in Bucharest. Increased dissatisfaction with the wars in the Middle East

²⁶ This incident does not actually fall under the purview of the SOFA, instead because the marine working for the embassy when he drove the vehicle jurisdiction was determined by a separate agreement connected to a discussion of diplomatic immunity. Similar to the recent Harry Dunn case in the UK when a diplomat's spouse struck and killed a UK teen as they were leaving a US military base. Many connected the case to the presence of US forces in the state and their legal status, while the particulars of the case placed it under the umbrella of diplomatic immunity (BBC 2019).

²⁷ This source is a leaked cable posted on Wikileaks. This cable was a discussion amongst US diplomatic personnel identifying sources of concern and expected issues as they continued to address the death of Teo Peter.

were already creating a tense atmosphere for the US, and increased pressure for a quick solution (Paul 2008).

Romania had clearly identified the changes they wanted in consideration with the United States and their SOFA. They again wanted increased US enforcement of laws and regulations, and the ability to try cases like the Peter death themselves. President Videneu was an executive who knew that the United States needed to choose to change either through gestures, or by accepting a legal change in the SOFA. Because the previous SOFA gave full control to the US, acknowledging any of these demands would be a reduction in US control, and unfortunately for the US's negotiation strategy, 2016 was when Romania was incredibly valuable for the US's global strategy. The newly elected president was able to make statements for change publicly in meetings where a discussion of the Peter death would not be favorable for the US only increasing the potential strategic cost for the US if they did not address these demands for change.

Strategic Importance

In 2016 the United States and Romania negotiated to expand their existing relationship once again. The United States has an increased need for the Romanian base, especially as the conflict in the Middle East continued, and there is no guarantee of systematic NATO support due to the end of Article 5. The threat from Russia had become important, for both Romania and the United States. The Crimean invasion in 2014 showed the United States that solid action needed to be taken to defend against westward expansion of Russia (Pifer 2020). NATO was a strong signal, but bilateral action from the United States could also provide a stronger indication of military support. In this new agreement the United States was asking to build a new Ballistic defense system within the existing bases in Romania (Stars and Stripes 2011). This would serve a great benefit to the United States and would not significantly improve the current protection already given to Romania by the agreement.

Over the course of the 2000s Romania joined several key alliances with the United States including NATO, the EU, a defense agreement, and a strategic partnership (DoS 2019). In addition to hosting key transportation hubs for NATO to access North Africa and the Middle East, Romania began hosting a constant rotation of US army personnel once again relying on Romania as a transportation hub into conflicts to the south and east (DoS 2019).

Case 1 Outcome

Using the established causal process, Romania and the United States were negotiating a SOFA while there was pressure for change that was clearly expressed by the newly elected president. Romania had moved from being a moderately important case to one of significant strategic importance. Recent conflicts in Crimea and missile defense in relation to Russia were major foreign policy concerns for the United States (Pifer 2020). The causal process would expect that following these three steps, a jurisdictional change could occur. There was active pressure for change, especially surrounding appropriate punishments for the accused, and improper investigation techniques that occurred during the case had been identified as problem policies to address (Paul 2008).

In 2016 a new SOFA was negotiated between the two states, and it gave much more control to Romania, by addressing their coherent demands while still maintaining control over the portion of the military base that the United States could not afford to lose²⁸. To address the new, easily expressed concerns within Romania about the division of jurisdictional control the SOFA was changed to give more jurisdictional control to Romania. This was done by reassigning the territorial control of the military bases to Romania. In all cases, except for the specific facility that controlled the Ballistic Missile Defense, Romania was given control over the territory. This essentially placed these other base areas under the concurrent jurisdiction of NATO while relegating the exclusive jurisdictional control from previous SOFAs with the US to just the single facility (Coon 2007).

In the mid-2000s Romania was one of the most important strategic pieces in the US's military strategy. As a key transportation hub, as a host for missile defense against Russia, and on the heels of the invasion of Crimea. The US could not afford to pay the cost of failure if they lost access to Romania. Unfortunately for the US' negotiating position, at the same time Romania suffered a major loss that direct demands for change specifically at the US and the jurisdictional component of the SOFA. Issues in the cases' investigation and subsequent verdict increased

²⁸ It could be argued that there is a significant gap between the Teo Peter case and the signing of the SOFA, but the agreement was actually folded into a major overhaul of the US' military relationship with Romania that was happening in 2007. The core of the agreement was established in 2007, and fine-tuned negotiations continued up until 2016 when the final version was signed (Stars and Stripes 2007).

tension between the two states, prompting both presidents to discuss the issue and agree that a quick solution must to be found.

Romania had already identified the particulars of the Peter case that they wanted to change, the hard work of policy identification had already been done, and the US would pay a monumental cost if the SOFA were to be dissolved. In a cost-benefit analysis it was clear that official jurisdictional change had to occur to ensure that SOFA would continue, as the case had already shown the identified issues would linger for years to come if not addressed.

South Korea

South Korea has peacefully hosted US troops since the end of the Korean War. The presence of US forces may have started as a continued protection against North Korean, but as the years went on South Korea became a key transportation hub for many naval missions. The location was key in providing support for patrols in the South China Sea, which allowed the US to respond militarily to a variety of issues in South-East Asia. There are two cases that explore the evolving relationship between South Korea and the United States. They evaluate how successful South Korea has been in its attempts to negotiate for increased jurisdictional control. Once again, to adequately understand these cases the historical context of this relationship first needs to be explored.

Historical Background

South Korea and the United States initially entered into an agreement together at the end of the Korean War in 1953. This agreement was part of a mutual defense agreement that allowed for US forces to reside in South Korea to continue protecting against North Korea (Millett 2020). At its inception the agreement was addressing an incredibly important strategic issue in the form of North Korean encroachment in the peninsula. Both the United States and South Korea felt that the continued US presence was needed to adequately protect against this security threat, and South Korea had such a severely weakened institutional structure that they could not properly negotiate a formal SOFA.

The formal establishment of a SOFA was delayed until 1966, once South Korea had strengthened its institutional structure and a government strong enough to negotiate with. Once this relationship was established it has since grown and flourished. Now the US presence in South Korea is one of the US' largest military outposts abroad with just shy of 30,000 personnel

stationed within the country (Reuters 2019). The 1966 SOFA established concurrent jurisdiction between the two states²⁹. Discussed in previous chapters, concurrent or split jurisdiction creates an even division of jurisdictional control. Each state has specific instances when they have jurisdiction, and in any cases where both states have the right of jurisdiction they must work together.

Since the establishment of the US' military presence their central location close to Seoul has allowed for large amounts of direct interaction between citizens and the bases, creating what Hohn and Moon have dubbed "hybrid areas" (2010). These areas refer to the regions directly surrounding military bases where there was a substantial business built around supporting the increased demand from the military personnel through goods and services (Moon 2010). While many of these enterprises were positive and ingratiated the military to those who economically profited from their presence, there was a significant negative effect produced by these economic incentives.

Not every business that sprouted up in response to increased demand was legal, and the world's oldest profession became one of high demand in the land surrounding military bases. These areas became known as "camptowns" where military personnel would travel outside the base to hire sex workers and then return to base after. Beyond sex work there was also a thriving black market that developed due to the easy access to goods that were unavailable in either country could easily be accessed and sold for profit (Moon 2010; Moon 2007).

Because the military bases in South Korea were centrally located there was a lot of direct interaction between civilians and military personnel, especially as Seoul became an urban metropolis. It was harder to show that the military bases provided a significant level of economic support to the area, as the large cities the bases were close to generated significant economic growth of their own. Hohn and Moon, and work by Catharine Moon alone have shown that within these spaces where South Korea and US military interaction was highest, arose a nationalist resistance against the continued foreign military presence. The rampant support of sex work which was not culturally desirable and the belief that the military bases were encroaching

²⁹ Department of State. 1966. "Facilities and Areas and the Status of United States Armed Forces in Korea: Agreement between the United States of America and the Republic of Korea". *Treaties and other International Acts Series* 6127.

on their state led, to a grassroots movement that would protest against the continued US military presence and structure of the SOFAs (Hohn and Moon 2010; Moon 2010; Moon 1997; Voetelink 2015).

Domestic Pressure for Change

Many different groups were organized around a desire for change in the relationship between the US military and South Korea. The Kijich'on movement protests the lack of prosecution of military personnel who use sex workers. In several high-profile cases, they have murdered those sex workers (Moon 1997). The People's Action of Reforms for SOFAs (PAR-SOFA) is an official organization established within South Korea to bring together the various demands for change within SOFAs. One portion of that group does demand jurisdictional change but others seek reform on issues of safety, labor rights, women's rights, or environmental concerns (Yeo 2011; Gillem 2007; Kawato 2015).

Nationalism

A strong sense of nationalism has been the source of several protests. In the 1980's there were several arson attacks that specifically targeted the US cultural center as a symbol of the United States within South Korea (Kawato 2015). These attacks were specifically targeted to show displeasure with the continued US presence but were not asking for any specific SOFA changes. These attacks sought for the removal or reduction of the US military presence within the state, but their motivations were not to renegotiate the SOFA at all.

Kijich'on Movement

Kijich'on means camptown in Korean. This movement was designed to bring attention to the abuse of the sex workers that had made the camptowns their home. The movement fights for increased prosecution of those military personnel who hire sex workers and increased punishment for military personnel who have killed sex workers (Moon 1997; Moon 2010).

Several high-profile crimes have become central to the Kijich'on movement, the first of which was the 1992 killing of Yun Kumi³⁰, a sex worker murdered by a US soldier (Ypeij 2014; Moon 2007; Yeo 2011). Her assault and murder were representative of the lax nature that the US

³⁰ Some sources report her name as identified here, but her name has also been identified as Yoon Geumi by others (Yeo 2011).

military had on limiting the use, and abuse of sex workers. The long-term use of sex workers was so substantial that South Korea had to build medical infrastructure to support the individuals who worked within the camptowns around bases (Moon 2007). The towns were well known epicenters for human trafficking and frequently were poorly built areas rife with accidental deaths and crime³¹ (Yeo 2011; Gillem 2007; Kawato 2015). Two years after the Kumi case three marines raped a twelve-year-old girl inciting another round of massive protests. This time over 85,000 people protests for weeks, demanding more strict regulation of criminal military behavior (Gillem 2007). At this point the government of South Korea began to officially demand change to the jurisdictional division (Yeo 2011).

The second inciting case was in 2000. A US military member killed another sex worker and according to the initial SOFA in both cases, the US military had jurisdictional control. The citizens of South Korea felt that the US was too lenient towards these individuals and South Korea should have more control over these cases. These abuses continued into the 2000s. They are relevant to both South Korea cases, as concerns permeated the national consciousness, including protest movements, films, and documentaries (Moon 2007; *Bloodless* 2017).

In the 2000s, after several of the rape cases, the Kyonggi Research institute conducted a survey asking what areas of the SOFA was most in need of revision among different groups. In all the surveys crime and undisciplined behavior were the issues where change was most wanted (Gillem 2007; Kawato 2015).

Base Protests

Protests against the US and the behavior of its forces were in no way limited to just jurisdiction. Demonstrations against the environmental policies of the military bases were frequent. Air Force and Navy bases are the most frequent offenders in terms of pollution. Air forces bases having the highest rates per capita and the navy having large scale “pollution events”, with massive damage (Lutz 2009). One such event happened in 2000 when a military base was caught dumping formaldehyde into the Han river (Yeo 2011). Runoff from airports, and sound pollution are all issues that have spawned protests against the US (Moon 1999, Kirk 2000; Gillem 2007).

³¹ For example, between 2000 and 2002 19 women died in apartment fires within A-town, a camptown located near Kusan Air Base (Gillem 2007)

The US military presence in South Korea is the third largest US military presence abroad. There are 25,000 military members stationed in South Korea from year to year and a fairly sprawling physical presence. As Gillem explored in his evaluation of US bases abroad, the land taken up by US military housing and bases is proportionally much more expansive than the same population of South Koreans would occupy. With each new push to expand or move US military bases, more land is taken away from South Korean use (Gillem 2007; Yeo 2011).

When Everything is Important

Many different groups were demanding SOFA renegotiation within South Korea and from year to year a different issue would rise to the forefront of the revision movement. In the late 1990s crimes that were not appropriately punished were at the center of most mass protests. In May of 2000 a payload was accidentally dropped on a village near a military base, resulting in deaths and massive property damage. Within the same year another sex worker was killed and the US soldier who was accused of the crime briefly escaped custody. He had to be captured on the run leading to proper custody procedures a specific policy demand (Kawato 2015). Then, in 2002 another sex worker was killed shifting the focus of protestors once again (Gillem 2007).

What these frequent shifts show, is that despite the clear policy identifications and significant pressure for change, the demands themselves are incoherent. Too many different groups were demanding SOFA change on different fronts. Even within jurisdictional control, along almost every aspect of jurisdiction, from investigation to prosecution there were demands for change. When everything is of vital importance, nothing is. The sheer variety of demands made it impossible for the US to reasonably address any of them and create any benefit for themselves.

Strategic Importance

North Korea remained a vital strategic consideration in 2001. A quick response to address the growing nuclear concern about North Korea is the clearest strategic benefit from the SOFA. South Korea and North Korea held their first summit since the end of the Korean War in 2000 (Kwak and Joo 2002). They discussed the future relationship of the peninsula and showed that the two countries were the most stable they had been since the war but this relationship was new and untested. Despite the cautious optimism created by the Sunshine Policy, the official Department of Defense report to congress on the United States' foreign policy, stated that North

Korea and preventing the encroachment of the state further into the peninsula, was still a top priority. They continued to host over 35,000 troops and a major UN mission (DoD 2000).

China was granted permanent normal trade status in 2000, dramatically reducing the economic threat presented by the state. But South Korea remained the best location for addressing any conflicts with China and Taiwan. Specifically, tactical fighter jets that rely on short range and fast responses would only be able to respond to threats from China from a close location like South Korea (Gillem 2007). In 2000 there was a clear strategic value in the South Korean SOFA. At the time the level of threat from China and North Korea was not at its peak, but there were no alternative locations in the area that could respond if their threat resurged. South Korea was addressing an important strategic issue because their location was not one that could be easily replaced by the United States using other locations.

Case 2 Outcome

The size of the political pressure was significant but disparate. The receiving government did little to convey these demands as they were nebulous and difficult to separate into clear policy changes. The Kijich'on movement came the closest to a clear demand, asking for more responsible prosecution of military forces. Their demands were obscured by the other protests and movements pushing for their own changes to the SOFA. Combined with the lack of viable alternatives in the region, South Korea in 2000, had a lack of coherent demands combined with a strategically important location.

South Korea received a behavioral change instead of a formal jurisdictional change. There is a recorded “new” SOFA between the US and South Korea in 2001³². Concerning jurisdiction, all the “changes” are noted as recorded minutes. These “changes” are not actually redistributing any jurisdictional control. They simply ask for increased “restraint” and “sympathetic consideration”, in instances of potential US jurisdictional control. Concerning the demands from the Kijich'on movement there were minutes adding “substantial departure” from the line of duty framework that has frequently been used as justification of US jurisdiction in criminal cases³³. Additionally,

³² Department of State. 2001. “Amendments to the Agreed Minutes of July 9, 1966 to the Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea, Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, As Amended”. 1-4.

³³ The line of duty framework is one the US has been consistently reluctant to specifically define (Voetelink 2015). By leaving the interpretation broad the US has more discretion what fits the spirit of “the line of duty”. The first

“due consideration” was asked for when respecting Korean authorities. There was no formal renegotiation of the South Korean SOFA, at least concerning jurisdictional control. The United States considers the “changes” that were made in 2001 as “reimplementations” (Kawato 2015; Levitt 1990). Essentially the US agreed to re-emphasize certain portions of the jurisdictional agreement and emphasize certain phrases that already existed within the agreement. These reimplementations did not change the division of jurisdictional control between the two states. All the terms added to the jurisdictional process placed emphasis or made suggestions for behavioral changes but did not formally define or restrict behavior in any way.

Instead of a formal jurisdictional change, South Korea received a behavioral change. The United States agreed to restrain their powers but no powers were formally removed. Increased consideration was given but no authority was taken away. Waiver use was to be limited, but no formal limitations were put in place. In short, South Korea received a subjective agreement, where the US appeared to address the demanded changes from the protest groups. No actual formal change to jurisdiction occurred. Each of the terms in each “change”, have no set definition and could just as easily produce no change at all. The United States did this to appease the large amount of domestic pressure, while having no formal additional restrictions actually placed on their behavior. In this way, the US could appear to address all of the disparate concerns brought up by the protest groups. All of their demands could be recognized but the US did not have to pay the cost of actually tying their hands.

US-South Korea 2004

Case 3

In 2001 the protest movements against the US military had become massive. That was nothing compared to the size of the protests that occurred in 2002 and beyond. In the election year 2003, a presidential candidate listened to the protestors and conveyed their demands to the US but their

example of this is *Girard v Wilson*, a supreme court case from 1957 where the term was debated extensively. If a soldier kills an individual during a mission, does it still fall under the “line of duty” or does there need to be a specific order to kill that individual in order to meet the requirement? The case questioned if “the line of duty” was limited to specific orders, or just acts accomplished during a mission (Snee and Pye 1957). Over time the US has erred on the broader definition using this justification to claim jurisdiction in many of the cases discussed within this chapter.

demands were too excessive. This case shows that there is a limit to what the sending state will respond to demand-wise. Despite the important threat, South Korea asked for too much.

Pressure for Change

In addition to the continued Kijich'on movement there were several additional sources of protest that developed in the two years since the 2001 reimplementation. In 2002, a military vehicle, part of a larger convoy was being driven by two US military personnel on their way to a training range. They struck and killed two South Korean teenagers (Kirk 2002; Kim 2010). There was massive citizen pressure to have South Korea prosecute the individuals in vehicle but the United States argued that because it was a military vehicle the soldiers were acting in the "line of duty" (Moon 2007; Ypeij 2014). The allocation of jurisdiction to the US, according to the wording of the SOFA was clear. Although according to the reimplementation, the US should have given consideration to the increased importance of this case to the South Korean people (Kim 2010; Jung and Hwang 2003). The United States military tried the case and found the two military personnel not guilty of negligent homicide (Brooke 2002). This ruling led to massive protests throughout South Korea as citizens felt justice was not being found, and there was inherent bias in a court system that did not involve South Korean citizens as jurors (Brooke 2002).

A protest movement evolved out of this domestic unrest, in particular with the "in line of duty" section from the SOFA. This section is included in all US SOFAs and gives the United States jurisdictional control during any potential crimes that are committed during the course of military duties (Jung and Hwang 2003). This stipulation has made it difficult for the receiving state to gain jurisdictional control in many cases as commanding officers stretch the concept broadly. In the 2002 case, the United States argued that because the vehicle the individuals were driving was military property, and the two were driving to a military training facility, then the incident was "in the line of duty" and the United States had jurisdictional control. Cases that fall under this debate are not arguing that striking and killing the girls was part of the orders of the two military personnel, but because any of the actions that the two involved property and purposes connected to their military mission, that they were acting in the line of duty.

Following the increased protests for jurisdictional change in South Korea, the size of the protests alone demanded a response from the South Korean government. They hoped for change from the United States. Over the course of the last few months of 2002, South Koreans rapidly mobilized

massive protest movements demanding jurisdictional change between the United States and South Korea (Yeo 2011). December was a presidential election, and both candidates considered SOFA reform planks in their political platforms. The liberal candidate Roh Moon-Kim had integrated demands for increased jurisdictional equality between the United States and South Korea into his political campaign (Guardian 2002). Historically Roh advocated for full removal of the United States from South Korea but later modified his demands to just more equal splits of control between the two states. The protestors themselves were most upset about the method through which the United States claimed jurisdictional control. In particular, the “in line of duty” section of the SOFA (Yeo 2011; Kim 2003). The protests demanded that this portion of the SOFA be removed, arguing that operating in some way connected to military orders was too broad and denied South Korea the right to jurisdiction in many cases where they should have been able to prosecute a crime.

Roh won the presidential election by a narrow margin and began to enact his policies. However, his ability to reasonably request for the protestors demands to be met was limited by the extreme nature of the demands (Kirk 2002). The sheer size of the protests did mean that the United States needed to respond in some way to at least to show that they still maintained permission to be within South Korea. In an “unprecedented” response to the domestic and government pressure, US military personnel held a candlelight vigil in memory of the dead. Official apologies were given by Secretary of State Colin Powell and Ambassador Hubbard (Kim 2003; Kirk 2002).

Strategic Importance

In the year since the 2001 reimplementation, South Korea had continued its status as one of the only options to address the highly important threats of China and North Korea (DoD 2000).

The public demand for changes to the, “in line of duty”, portion of the agreement were not reasonable, and therefore there was no way the US could make a concession on that issue. The United States has been extremely protective of this section, as it protects their forces from being prosecuted for following orders or acting to meet requirements of their missions. Even if these in some way break the law of the host state (McDonald and Bendahmare 1990; Snee and Pye 1957; Voetelink 2015). Removing this safeguard removes one of the basic tenants of the SOFA, which is protecting the forces from persecution. Statements surrounding this demand defended this section by arguing that the forces did not choose to go to South Korea, they were stationed there.

Their choice was going to South Korea, or go AWOL, Removing that portion would essentially force individuals to also defy orders within South Korea if they feared potentially breaking South Korean laws while following mission orders (Kirk 2002).

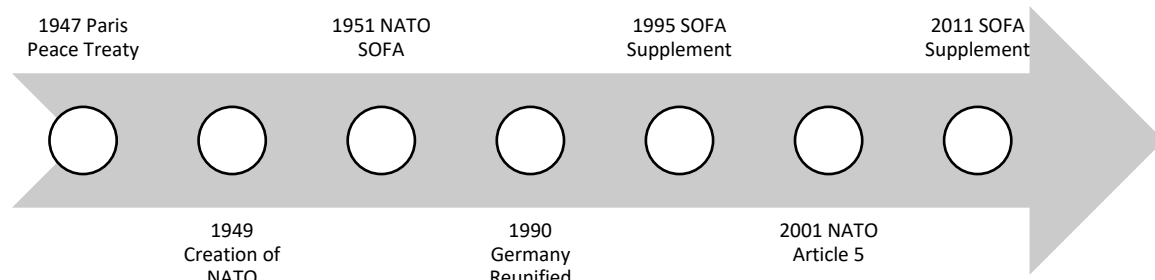
In addition to the United States' own reluctance to address the specific demands, the broader equality demands from the receiving state government were functionally meaningless. As shown in Jung and Hwang's analysis there is functional equality already between the United States and South Korea. Protestors began to demand a "fairer" agreement like NATO, when in reality with the 2001 reimplementation, South Korea had the more favorable SOFA. No changes to the SOFA would address the demands without extensive discussion between the sending and the receiving states (Cha 2010; Jung and Hwang 2003). Because of the established relationship between the two states and the unreasonable nature of the protestor's demands the United States did not respond to this pressure for change. No formal change was made to the jurisdictional section of the SOFA and no behavioral changes were made either. The 2001 SOFA between the United States and South Korea stayed the same and has remained to this day.

United States and Germany

Background

The United States has had forces stationed within Germany continuously since the end of WWII. The initial presence of these forces was part of the occupation, but after the war and the Paris Peace Treaty the United States remained within the country. With the permission of the state, they stayed to continue to protect against western encroachment of the Soviet Union (OotH n.d.). The formal establishment of their military presence was enshrined in the first modern-style SOFA (Snee and Pye 1957). Over time Germany has been split, recombined, and become a central figure in NATO's military strategy.

Figure 17. Timeline of Germany's SOFAs

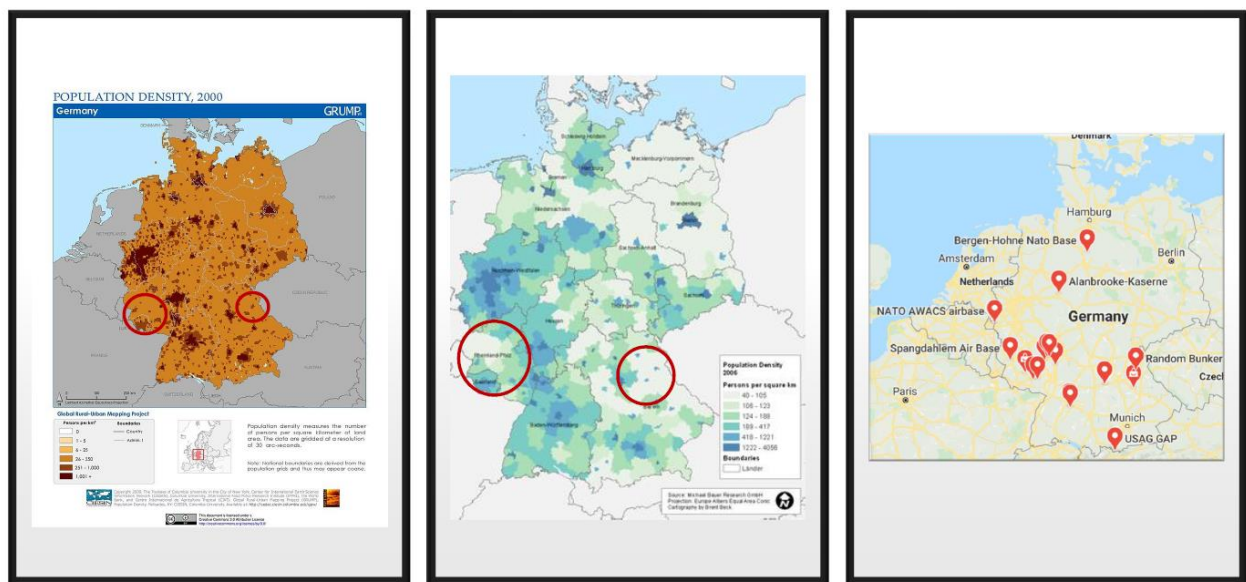


The NATO SOFA allowed for the presence of NATO forces within members with consent. The jurisdictional split in this case has been discussed extensively in previous chapters, but to reiterate, if any crimes were committed by the visiting forces then the two states involved would split their control and work together to address the issue. The military bases themselves would belong to NATO and the visiting forces, and the visiting state would have jurisdiction if the crimes did not extend beyond their walls, but if the sending and the receiving state both had a stake in the case then jurisdiction would be split.

NATO began in 1949, and formally established the organization's SOFA in 1951 (OotH N.D.; Haglund 2020). At this time Germany was split into East and West with NATO members being allied with the Western side and the Soviet Union controlling the East. This split had a geographic effect on the location of military bases that can be seen today. Most of the military stationed within Germany are in the southern region of the state. Their initial placement reflected the limited access of NATO, as East Germany was not an ally. As years passed and Germany reintegrated this western focus remained (Lemza 2016). Most of the visiting forces are in the western half of the state, which has historically been a relatively rural region of the country (SEDACK 2009; Google 2020). Looking at the comparison maps below, the large clusters of modern military bases are in regions with lower population levels. These regions also have

decreased levels of urban development. The orange map indicates population density and the green map indicates urban development. Compared to the location of military bases in Germany on the far right of the image, it is clear to see that the military bases are largely located in low population, rural areas where direct interaction between military forces and the citizens of Germany is limited. There is a strong skew towards the south as well. In addition, the large presence of military forces in these regions provides a significant economic benefit to areas that statistically gets less economic support than the rest of the state. However, despite the relative separation of these forces from Germany as a whole, in the southern region there has been long term extensive interaction between the US forces and German citizens in the villages and towns surrounding the military bases (Birnbbaum 2012).

Figure 18. Comparison Map of Germany's Population, Urban Development and Military Bases.³⁴



³⁴ SDAC 2009., Bauer n.d., Google 2020.

Case 4 US-Germany 1984

The NATO SOFA was the first instance of the modern-day SOFA. It established a new understanding of how military bases would work and how long they could be peacefully hosted within a country. Staying long-term, far beyond the end of the conflict, had not been done before. No one knew how the new system of jurisdictional splitting would work and what problems would arise³⁵. Germany was in a unique position within Europe, being simultaneously restricted and supported by NATO. The SOFA was the first major test to see if the jurisdictional structure of the agreement would hold up over time and how disagreements about the agreed upon structure would be addressed. Case four had pressure for change within Germany, addressed an important threat, and yet no formal change happened because the demands were not coherent.

Domestic Pressure for Change

In the 1960s and into the 1980s, several different protest movements began to make their desires for SOFA reform known. Three core groups with different goals evolved, the first of which was a student movement. This movement began in the 1960s and started out as a student movement protesting any continued government connection to the previous Nazi regime. Protests and assassination attempts led to the group splintering, with the more radical faction evolving into the extra-parliamentary opposition. This group sought to bring reform from within government and became the Green Party who gained government representation in 1983 (Kraushaar 2018; Schmidtke 1968). Their cause centered on anti-nuclear protests and would frequently fight for nuclear weapons to not be stationed within Germany (Schmidtke 1968). In the 1980s the anti-nuclear movement increased in strength, and as the Green party gained parliamentary seats, they were able to express these demands to the sending state.

During the time of Germany's split status, with the liberal west balancing against the communist east, there was constant tension in the region. In 1965 two military personnel were driving off base in a taxi and murdered the taxi driver. They then went AWOL and were later arrested in

³⁵ There had been one supplement to the SOFA in 1959, clarifying how the newly created waiver process would work by specifying what types of crimes would likely need waiver use, where trials would be held, and who specifically would fall under the purview of the SOFA. These were not changing the SOFA so much as explicit clarification as to how the process worked in practice, closer to a behavioral change than anything else.

Wisconsin on suspicion of robbery and murder. They were tried and convicted of the murder and robbery and sentenced to life. During this time the law enforcement officials notified West Germany that the individuals suspected in the taxi driver murder had been apprehended (Pressley 1989). At this point according to the NATO SOFA, West Germany had the right to jurisdiction, the two were not acting in the line of duty, they were off base when the crime occurred and they killed a West German citizen (US CoA 1984). West Germany waived their right to jurisdiction as the US was already currently trying the two in question. The two were tried and found guilty of the murder and robbery. However, before their sentences could be carried out, the supreme court found that their Miranda rights had not been properly conveyed and their convictions were overturned. West Germany was notified of the outcome and asked to repeal their waiver and try the two in West Germany instead. The United States denied this request, arguing that it would set a dangerous precedent to allow West Germany to change the jurisdictional outcome so late in the process (US CoA 1984; Pressley 1989). Following the murder, massive protests swept West Germany including 1500 taxi cars driving in a march to honor their fallen compatriot (Reuters 1964a).

In the 1970s there was rape and murder of a German taxi driver by two American GIs as well as four others convicted of a robbery (Lemza 2016). The GIs were not the only sources of crime and prejudice when the US bases were first established. Just after their creation there was significant difficulty for the visiting forces. The US military had a racially diverse makeup and Germany was not as welcoming, issues stemming from discrimination occurred (Junker 2011). The post-war nature of these bases together with the continued pressure from the west created a tense environment overall.

Into the 1980s, rapes, robberies, assaults and murders continued with pressure for change to the jurisdictional agreement beginning to rise. By 1984 this increasing pressure overflowed with return to public consciousness of the taxi driver murder. In 1981 Germany filed an application for extradition for one of the GIs involved in the 1965 case that the United States attempted to comply with (Pressley 1989; Washington Post 1988). However, the delayed nature of this request led to further habeas corpus cases as the GI argued that his right to due process had been violated by allowing the case to continue so long after the initial incident. A US district court found that the issue of a speedy trial was one that needed to be brought before West Germany,

not the US. By the time the case returned to West Germany in 1984, it had been almost twenty years since the initial case and neither of the accused had been tried for the crime (USCoA 1984). Germany began to demand increasing jurisdiction over these kinds of cases, arguing that the United States military was being too lenient. The initial case in '65 had already prompted huge protests and the delayed nature of the final case led to even more dissatisfaction (Lemza 2016).

Between the initial high-profile murder case in 1965 and the rise of the student movement into government in 1983, public pressure for increased prosecution of these times of crimes was still high. Peaking in 1973, a West German labor union released an open letter demanding some sort of punishment from the US, French, or Russian militaries to try and reduce the amount of crime being committed in West Germany (Lemza 2016). The Germany Court system attempted to express these concerns by applying for more jurisdictional waivers. This did not change the sending state behavior or the wording of the jurisdictional agreement. Instead the receiving state government was being more proactive in their jurisdictional behavior (Lemza 2016). Many more cases were tried within West German courts. In this time period but these changes did not align with point of highest demand for change, showing that the sending state was not actually changing their behavior in any meaningful way.

With the parliamentary elections in 1983, the student movement, now known as the Green Party, was official represented in the receiving government and could convey their demands for change. The major source of social pressure within Germany at the time, came from the 1965 murder of a taxi driver by US military personnel. This case had begun all the way back in 1965 but did not return to West Germany until 1984. In 1984, a West German court found the defendant guilty and he was sentenced to death, to be carried out by the US military (Washington Post 1988). The initial US decision to not prosecute the case, and then their inability to prosecute the individual appropriately created a strong public perception that the US was lax in prosecuting the crime and was far too lenient with their personnel. In addition, most West Germans did not approve of capital punishment. While happy that the US was prosecuting the appropriate crimes, they did not support sentencing the GIs to death (Washington Post 1988; Pressley 1989).

Strategic Importance

Germany was one of the founding members of NATO and hosts one of the largest overseas military presences for the United States, second only to Japan (Kawato 2015; Lutz 2009). Since the inception of NATO, having a significant military presence within Germany address two important concerns: Soviet encroachment into Europe, and Germany itself (OotH n.d.). After WWII the physical presence of NATO forces would be a strong deterrent for any attempt by Germany to regain military power. NATO's other purpose was to prevent westward movement by the Soviet Union (OotH n.d.). Using heavy artillery and other significant shows of military strength the NATO bases within Germany provided a physical show of strength against the USSR (Snee and Pye 1957). Before the end of the Cold War the fear of Soviet westward expansion was still high and Germany was the main location protecting against this movement. Up through the end of the 1980s, Germany was addressing the strategically important issue of Soviet military pressure.

Case 4 Outcome

Into the 1980's the increased threat from the Soviets in Eastern Germany led to the United States forces ensconcing themselves within the bases and not reaching out to the local community. Alongside this increased isolation, the US integrated women into the military and ended the draft. These changes significantly decreasing the demand for sex workers and recreational drugs to support the GIs' demands (Lemza 2016). During the 1970s and 1980s drugs and crime became major contributors to unrest between West Germany and military personnel. The biggest uptick in these issues occurred in 1981. At this point, drug use among military personnel was at its peak and the threat imposed by the Soviet Union and East Germany was higher than ever. While the Integration Act made women a permanent part of the military in 1948, positions for them were only widely used going into the late 1980s. Before this time there were hard limits set on the number of women who could join the military, what positions or branches they could join, and the ban on combat lasted well into the 2000s (Lemza 2016; Junker 2011).

The taxi driver murder trial that began in 1965 did not return to West German control until 1984. Before that point there was significant domestic pressure for West Germany to gain more jurisdictional control within the SOFA (Presley 1989; Washington Post 1988). What this case illustrates, is the importance of time in the causal process. The history of West Germany would

suggest that all the components of a successful renegotiation were present. There was significant domestic pressure in the 70s, with unrest coming from a lack of jurisdictional control (Lemza 2016). These serious crimes continued to rise and peaked in 1981 and by 1983 there was a government in place that could convey these demands clearly to the sending state (USCoA 1984; Presley 1989). The initial attempt by the receiving state to push for change by applying for more jurisdictional waivers peaked in 1980 (Lemza 2016).

Unfortunately for West German desires, none of these trends lined up to create an environment that clarified their demands enough for official change. The initial push for waivers ended just as the sources of receiving state pressure peaked, meaning the receiving state government's ability to convey their demands did not line up. Crime began to fall before the newly elected government came into power, and the salient murder case began the next year. At various points over a 20-year period West Germany had all the components for a successful renegotiation, but they were never clear enough for the US to concede any official change in jurisdictional control. In fact, the trend of waiver use shows that the United States had chosen a temporary behavioral change as their solution to the domestic pressure. In the short term the US was altering how frequently they would use the waiver system. Choosing to give jurisdiction to West Germany without formally tying their hands. Once the pressure for change would die down, the US would stop giving up control and return to their previous behavior. The altering patterns identified in this case, show that this strategy of temporary behavioral change was effective in appeasing domestic demands, without formalizing any changes or officially giving up jurisdiction.

Case 5 US-Germany 2011

By 1995 there had already been huge changes within the border of Germany. With the fall of the Berlin Wall, all of Germany became a NATO member and began interacting with visiting forces. Germany had more alternative SOFAs structures to compare with their own and as the presence of foreign troops continued long after the end of the Cold War, the dynamics between sending forces and locals shifted. The threat Germany addressed also changed significantly from the 1980s. With the fall of the Soviet Union and the rise of conflicts in the Middle East post-9/11, Germany's bases now operated as support facilities to conflicts abroad. With all of these changes, the fifth case demonstrates that either source of strategic importance will still fail to produce official jurisdictional change if the demands from the receiving state are not coherent.

Pressure for Change

In the previous case, various crimes together with racial tension and confusion about when waivers could be applied were sources for domestic pressure for change. As the states moved into the new millennium some things changed and some things stayed the same. Crimes like sexual assault and murder were beginning to increase after 2001 but the racial tensions were gone (Lemza 2016). The war in Iraq and other conflicts in the Middle East became major sources of domestic pressure. After September 11th, NATO invoked article five of its mutual defense agreement for the first time in the organization's history (NATO 2019). All member states agreed to help protect the United States and respond as if they themselves had just been attacked. Germany, as a key member of NATO, actively participated in this movement becoming a major transportation hub for the US. As dissatisfaction and unrest grew with the continued conflict and initial invasion of Iraq, major protests began to arise within Germany. Correspondingly, crimes committed by visiting personnel began to increase as the number of forces expanded to reflect the war effort, the focus of protests continued to be the war in Iraq (Deichert 2010; Allen and Flynn 2013).

The student movement that had evolved into the Green Party within Germany, continued to protest for the removal of nuclear weapons, reduction of pollution and the end of Germany's participation in the war in Iraq. One of the largest movements came from the Anti-Nuclear and Peace organization, who protested the stationing of nuclear missiles at Ramstein Air Base in Germany (Rassbach 2010). In another major protest moment, Major Florian Plaff, a German military officer, refused to supply logistical support to the US military in protest of the war in Iraq (Deitrich 2010).

To place these various protests into a chronological context, the War in Iraq protests began in 2003 and the nuclear protests peaked in 2004. Both movements occurred after 2001, when the biggest expansion of infrastructure to support the visiting forces would have already been established, increasing interaction with receiving state citizens.

Strategic Importance

After WWII and into the Cold War, Germany's position was the main source of its strategic value. As the Cold War shifted focus to other proxy conflicts around the globe, the value of Germany's military bases shifted. After 9/11 there was a fundamental shift in how states

considered their military policy. Strategically important issues were no longer restricted to contiguous states, instead they could come from across the globe (Voetelink 2015). Transport and logistical support for conflicts around the world became the new source of strategic value, and Germany had become a central piece to the US' logistical framework (Cooley 2008; Vine 2017; Rassbach 2010; Schmitz 2020). Germany has hosted NATO troops for over 50 years, and during that time expansive base and infrastructure development has made Germany a vital strategic location. Germany's military bases are massive endeavors of "ice cream" spending and intense infrastructure development (Cooley 2008; Vine 2017). Air strips, missile facilities, hospitals, training barracks, and housing for thousands, just to name a few of the amenities within the bases (Vine 2017; Gillem 2007; Cooley 2008). Even though, Germany is not physically close to active conflicts, their bases do address an important issue. Because there is no viable alternative for the resources, they provide without the US paying a significant cost of failure.

Using the categorization identified for these case studies, Germany in the early 2000s did address a strategically important threat. Access to the military bases was vital to continue to provide logistical support for other conflicts abroad including the Middle East. Without a clear transportation path to move forces to and from conflicts in the Middle East, the current military strategy for the US would be crippled (Rassbach 2010). There are other locations that the US could sign a SOFA with, as seen in the Romania case above, but it would take years to build up the needed infrastructure to provide the services located in Germany. Considering these factors Germany is strategically important for the US.

Case 5 Outcome

There is no denying that Germany was of vital strategic value to the United States in the 2000s. A central member of NATO, with some of the most expansive overseas military bases and one of the largest sources of logistical support for broader US military initiatives made Germany a critical of US strategy. The US would need to listen to demands for change from Germany but for change to occur Germany would need to have significant domestic pressure and some consensus in their demands.

History as shown that the issue of jurisdiction has been a salient one for German citizens. There is a general dislike for how the US punishes crimes committed within Germany and many feel

that increases in crime occur because the US is too lenient with their personnel (Washington Post 1988; Pressley 1989; Rassbach 2010). Protest movements in Germany showed that the public was paying attention to US military behaviors, expressing their displeasure with nuclear strategy, environmental policies and the war in Iraq (Deitrich 2010; Cooley 2008; Vine 2017). But, the various sources of protest made it difficult for the receiving state government to convey any demands for change to the sending state. By breaking up the displeasure with the sending state into so many disparate factions the clarity of the receiving state demands became muddled. Even the jurisdiction specific demands were at times contradictory. Demands for increased punishment (Junker 2011; Reuters 1964a; Reuters 1964b) run counter to demands for a removal of capital punishment (Washington Post 1988; Pressley 1989; Svan and Kloeckner. 2014).

By dividing up the focus, the clarity of the receiving state demands becomes unclear and impossible for the sending state to address, no matter how imminent the threat. In 2003 there was an amendment to the SOFA between the United States and Germany. The negotiations for this change would have occurred at a peak in demands for change and when Germany was providing significant support for US conflicts. Once again, the demands for change were too muddled. The amendment only discussed technical workers, and identifying construction concerns, failing to mention jurisdiction at all.

That is not to say that the receiving state government became unresponsive to demands for change presented by the public. In 2004, the anti-nuclear movement organized a large-scale protest of nuclear missiles at Ramstein. These protests expanded nationwide and the receiving government was able to convey these demands to the sending state. By 2007, the United States had removed the nuclear missiles from the base in question (DW 2007). The pressure for change on this issue was by no means removed, when this change occurred. Germany and the US continues to argue about the type, size and location of nuclear weapons in Europe.

The anti-nuclear protests show that if the state could come together in a unified fashion, then change would quickly occur. Once the protests became national they had a clear message the receiving state government could convey, and the US quickly made changes to their nuclear strategy. Because any demands for SOFA change are divided and, in many cases, overruled by other demands for change, it is impossible for jurisdictional change of any kind to occur. Bearing in mind that Germany is still strategically valuable to the US, the forces remained, but no change

to the SOFA occurred. In 2011, a supplementary SOFA was negotiated between Germany and the US, but no change was made in the jurisdictional framework of the agreement.

In this last case, Germany presented no coherent demands for jurisdictional change but did have strategic importance. The US responded with behavioral change, in this case addressing one of the issues brought up by protestors. The changes to nuclear policy did not last long. By 2008 all the nuclear weapons were still not gone (Dempsey 2008). As of June 2020, there is a push for dramatically changing the US military presence within Germany, including removing the nuclear weapons stationed there, suggesting that the US never followed through on their behavioral change at all (Conrad and Werkhauser 2020).

Conclusion

Five different cases have been presented over the course of this chapter. Each case shows how a sending and a receiving state could progress along the causal process based on their values of strategic importance and coherence of demands. The rarest outcome is official jurisdictional change. The rarity of this outcome stems from the stringent requirements that a case need to be met. There needs to be coherent demands for change and a receiving state that is strategically valuable. If both of these points are not fully met that formal change will not occur. Partially meeting these requirements will instead only produce temporary behavioral change or no change at all to the jurisdictional split. Finally, if the sending state does not find significant value in the receiving state, the demands could be the strong and well conveyed but instead of changing the sending state will simply leave. There is no need for the sending state to continue negotiation if the cost of doing so will never be paid by the benefit of the location.

There are some characteristics that continued to appear in each case that may suggest avenues for future research including the geographic location of military bases or their economic benefit to the local economy. There are some upcoming datasets hoping to create the first geographic mapping of military bases, as the available data is incredibly inconsistent. From a practitioner standpoint it is difficult to find a consistent definition of what constitutes a military base, making their mapping difficult.

Germany and South Korea were not willing when the initial US military presence was established during WWII and the Korean War. Formally an occupation, the continued presence of US forces suggests the receiving state in these cases still need to be controlled, running

counter to the high level of trust and cooperation needed for a successful SOFA. In the Germany and South Korea cases dissatisfaction with foreign forces continues to rise as the initial conflict that incited their presence falls further into history. Each following case of “unfair” jurisdiction or “violation of sovereignty”, when the outcome of a case does not go as desired creates more domestic dissatisfaction with the SOFA. The only reason those crimes were committed, was because the SOFA placed those forces in the receiving state. Dissatisfaction with the US and the conflicts it was involved in, became interconnected with anger at the continued US presence within Germany. After almost 50 years, Germany was no longer being restricted by NATO but instead was one of its major contributors (Lutz 2009; Cooley 2008; BBC 2020). The Romania cases operate in a similar way, but without the sending state always being the US.

Over the decades, the receiving state may become dissatisfied with their relationship with the sending state, hoping for more control in certain cases or influence over investigations. But any desire for change will only come to fruition if there is significant pressure for change and the receiving government can (and is willing to) convey these demands to the sending state. These stipulations are incredibly difficult to meet. In many cases a receiving state will see no change or at best a temporary behavioral change with no guarantees from the sending state. The trend of peaceful basing abroad has only expanded as the US and other states use this strategy to help with state-building. Understanding how the sending state and the receiving state work through any disagreements, will clarify the historical behaviors of states hosting troops. It also should give a framework for understanding future behaviors as basing continues to be a long-term strategy for many states.

Chapter 6 Conclusion

Findings

This dissertation evaluated SOFAs based on their jurisdictional outcomes, breaking them up into three basic categories, do they favor the sending state, the receiving state, or is the split even between the two. Using this dependent variable, the role of strategic value, trust and long-term interaction could be tested. The findings show that strategic value has a mixed effect on jurisdictional outcomes. Only proximity to conflict significantly pushed for sending state control, power does not significantly affect jurisdictional control at all. When trust is incorporated into the models, a shared colonial history has a significant positive relationship with agreements that give the receiving state more jurisdictional control. A lack of legal system similarity has a positive relationship with agreements that give more jurisdictional control to the sending state. Finally, mutual agreements across all the chapters, produce more concurrent jurisdictional outcomes.

The case studies add in a temporal element, evaluating if the same factors influence attempts at renegotiation. The cases show that the cost of failure is still salient in the renegotiation process. This cost is evaluated using strategic importance and coherent demands for change to justify the cost of change. Without clear demands there will be no official jurisdictional change, and the sending state may choose to either temporarily appease demands or leave altogether. These findings have added a temporal element that could not be included in the quantitative studies. They show that cost of failure is still something states consider, but the cost of developing policy change is another factor that is added to the cost benefit analysis. Successful movements for change need to have clear policy changes identified, for the sending state to even consider a jurisdictional change.

The cases further reiterate that the focus of SOFAs is not sovereignty, it is truly about protecting the legal rights of citizens. Sovereignty arguments are never the ones that produce change, but the timing of these demands is also key. They need to occur at a time when the receiving state addresses a high-value strategic issue for the sending state. The added temporal element gives a clearer understanding of how state military relationships evolve over time, and what issues are actually the source of change.

Mixed Significance of Results

Across the three empirical chapters there are mixed findings, with only the trust hypotheses having enough significance to say that the null relationship can be rejected. The case studies show that cost-benefit analyses are shaping state behaviors, but the quantitative studies show significance only from proximity to conflict for the strategic value variables. Power has no significant relationship on jurisdictional control in any of the models, running counter to much of the realist literature would expect.

Potentially, this lack of significance can be attributed to the difficult-to-study nature of SOFAs. There is a reason that they have not been studied from a large-n perspective, they vary greatly in structure, and address many different types of military facilities. As mentioned in the case studies, interaction between sending state force and the receiving state citizens is the source of jurisdictional concern in most cases. There are many factors outside of SOFAs that can shape that interaction. Geographic location is one factor, either the location of the sending state force in relation to population centers. The percentage of total land in the receiving state that is taken up by the sending state is another factor. At the present, it is impossible to accurately measure this every case, much of that data is classified in some way and even getting an accurate count of military bases abroad is difficult. Practitioners change their counts based on their definition of a military base and attempting to measure this for all SOFAs would also incorporate training facilities, airports and seaports (Harkavey 1989; Lutz 2009). There are recent studies attempting to recognize the role of the geographic location of military forces within a receiving state, but these are new, limited to the United States currently and took years to develop (Allen et. al 2016). Just as the level of interaction between forces and citizens can vary, so can the type of sending state presence. Different types of military presence change the type of interaction between the two groups. Basing analysis has found that the branch of the armed services can change the interaction, and SOFAs vary even more (Lutz 2009). Identifying the type of military presence the sending state has is difficult. In some cases, it is identified within the SOFA, but for a cohesive dataset it would take extensive research to identify the purpose of each SOFA.

The difficulty of studying SOFAs has made it hard to find many significant results in this dissertation, but difficulty should not discourage the study of these agreements entirely. It will take incremental progress, but this work strives to take that first big step. Creating a clear dataset

of SOFAs between states and beginning to explore what shapes bilateral agreements starts to pull back the curtain on agreements that have been historically shrouded in mystery.

What Do We Know Now that we Did not Before?

This dissertation has extensively explored status of forces agreements, evaluating previous literature on their structure and effects, and then empirically testing what can shape their jurisdictional outcomes. SOFAs have unfortunately not received the empirical analysis they deserve, most often in political science they are connected to military base evaluations, but not assessed as their own entity. Studies that incorporate sociological components have long recognized the effects of long-term interaction between the military forces and receiving state citizens but again, did not directly evaluate SOFAs and their role in this relationship (Moon 2010; Moon 1997; Yeo 2011; Gillem 2007; Cooley 2008). Legal reviews have come the closest to understanding the structures of these agreements and identifying problem areas in their jurisdictional divisions, but their analyses do not connect their findings to the political context (Voetelink 2015; Baxter 1957; McDonald and Bendahmane 1990). This dissertation finds support for the legal analysis literature's argument that SOFAs behave like a legal document much more than the military basing's assertion that these agreements are like military alliances. To understand why SOFAs change, or when states decide to leave needs to be approached from a legal analysis perspective and not from a realist or military literature framework to accurately understand the dynamics at play.

These disparate literatures have been circling around SOFAs, identifying the significant effects they have on the receiving state and its perceptions of the sending state, discussing jurisdictional control and how the splits create confusion in its participants, and showing how basing decisions can shape overall military strategy and how sending states can address conflicts and global strategies by stationing forces abroad. Understanding status of forces agreements, and in particular, what shapes their jurisdictional outcomes helps connect all of these literatures and fill the gaps in their explanations for state behaviors. Knowing what makes a state willing to give up jurisdictional control shows why sovereignty arguments have been unsuccessful when demanding change. It identifies why some demands for change are successful and some are ignored. Knowing when these demands are successful explains larger military strategy decisions and gives a clearer context for current decisions around military basing, and the new lily-pad

strategy. Anti-sending state sentiment is more clearly understood, as SOFA structure frequently incites dissatisfaction and anger over court verdicts.

The long and short of it is, receiving states clearly find these agreements important, it shapes their presidential campaigns and incites thousand strong protests (Yeo 2011; Gillem 2007; Lutz 2009; Kawato 2015). Yet, these agreements have never been collectively studied in the context of political science. This dissertation has connected the legal analysis of these agreements with the substantive outcomes they create in military strategy and interstate relations.

Limitations to the Research

Each SOFA is unique in a variety of ways. Part of why using large-n analysis of SOFAs has been difficult has been their individual nature. Each SOFA shares a common purpose, but the overall structure beyond that can change dramatically. The way forces are sent abroad comes in many different forms. Each of these forms provide a new context that the sender and the receiver understand when negotiating the initial SOFA. The size of the visiting force, their proximity to urban areas, the planned length of the visiting presence, each of these factors could understandably shape what jurisdictional outcome both states would be willing to accept but are difficult to measure here.

Future studies would benefit from including measures of these factors, to test if their additional context help better fit the models, but here and now they are not available. Each SOFA does not clearly identify the purpose of the visiting force, and those that do, do not state that purpose in an easily operational-able manner. There are scholars currently working to create a dataset of geographic locations for US military bases, and their proximity to receiving state cities (Allen, Allen and Flynn 2016), but this data is limited to just the US and would leave out almost half of the current data set.

There are many more cases contained within the dataset that are not evaluated in this study, multilateral agreements and those that include international organizations do not lend themselves to the type of empirical assessment done here. The results found here do not evaluate the effect that having multiple senders, or a collective organization sending forces may have on jurisdictional decisions.

Future Directions

Now that this study has created a dataset to pull from and proven that jurisdictional control and the rights of citizens is the component of these agreements that needs to be studied, there are many future directions to take this research. Using this new list of observations studies on occupation can be completed. SOFAs reflect the changing strategy of military basing around the globe, where states plan on long-term presences to help build up states and strengthen global strategy (Voetelink 2015; Lutz 2009). The use of SOFAs coincided with a fundamental shift in how occupation after conflict works. SOFAs can be used to identify when an occupation shifts from a forceful presence to one that the receiving state has consented to and negotiated. I have worked to develop a study using SOFAs as a new tool to measure occupation. If the state hosting troops is not stable enough to sign a SOFA, then they are not stable enough to consent to the peaceful hosting of troops.

Using network analysis, the dataset itself can provide many future avenues for study. Using the raw agreements network analysis can evaluate what patterns are present when states emulate the NATO SOFA. Potential patterns across sending states could also be identified. More detail can still be pulled from the dataset to identify patterns and trends within SOFAs. Regional behaviors, effects created by regime type, and the role of development are all additional characteristics that can be added to the data for future study.

The jurisdictional outcome coding presents many new exciting avenues for study, especially as it addresses the issue of legal protections instead of state sovereignty. With jurisdictional outcomes as the dependent variable future studies could incorporate the variables that were missing in these models, assessments of geographic location, economic effects or variations in the type of military presence would provide further context for the relationship between sending and receiving states. The shift from large-scale bases to lily-pad bases also presents an interesting natural experiment to evaluate if the size of the sending state presence changes jurisdictional outcomes. Finally, this dataset is lacking in authoritarian regime observations. It is known that China, North Korea and the USSR have additional SOFA cases that are not currently available. With a lot of additional time the contents of these SOFAs could be found and added to the dataset.

Shifting jurisdictional control to an independent variable opens up a whole new avenue of research. Do agreements with a certain level of control given to the sending state shape subsequent events for the sending and the receiving state? Military and economic support, or even public opinion could be affected by jurisdictional divisions.

This dissertation is the first step to creating a global understanding of status of force agreements. Their very nature makes them difficult to study, but that does not mean that they are not worth evaluating. SOFAs are highly salient to the states that receive forces and ignoring these agreements because they do not have a regular structure ignores the role these agreements play. They are unique in their ability to connect the domestic with the international, and focus on issues of legal rights, not power or sovereignty. They need to be understood as their own entity, and this dissertation starts that process.

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Appendix

List of Observations

This list identifies every SOFA present in the dataset from 1903 to 2010, the latest date the quantitative analysis extends to. There are more observations listed within this table as it includes multilateral agreements, indicated by the 5555 code, and observations where there is no contents to code for a jurisdictional outcome. To be listed here the observation must have a clearly identified start year, sending state and receiving state, even if it's a group or organization. 5555 observations can be multilateral groupings of states like Australia, New Zealand and the Solomon Islands, or it can be an organization like the African Union or the EU. This list is more extensive than the data exploration discusses as many of these observations do not have clear sending states to connect to the other variables in the quantitative analysis or the contents of the agreements are not available to evaluate their jurisdictional outcomes. Duplicates of mutual agreements are not included in this list.

Figure 19. List of Observations

Year	Sending State (cowcode)	Receiving State (cowcode)
1903	2	40
1942	385	2
1945	652	651
1949	211	200
1951	2	390
1951	2	350
1952	5555	5555
1952	2	200
1952	2	663
1953	2	20
1954	5555	740
1955	2	260
1955	651	652

1955	2	90
1955	200	645
1956	2	390
1956	5555	651
1957	364	265
1957	365	290
1957	5555	660
1957	365	310
1957	365	360
1959	2	255
1959	5555	5555
1960	200	352
1960	5555	352
1960	5555	352
1961	220	471
1963	2	900
1963	220	615
1964	20	1003
1965	2	90
1965	20	1003
1966	200	110
1966	200	571
1966	20	5555
1967	200	501
1969	5555	352
1971	2	692
1973	5555	5555
1974	5555	481
1975	2	630

1975	5555	438
1976	5555	670
1976	5555	541
1977	2	95
1977	900	910
1977	910	900
1977	5555	615
1978	5555	225
1979	5555	522
1981	2	80
1981	5555	530
1983	433	420
1984	2	55
1984	2	235
1984	2	490
1984	2	522
1984	200	501
1984	200	710
1984	2	55
1985	200	710
1986	2	579
1986	2	698
1987	5555	433
1988	2	800
1988	830	900
1989	5555	630
1989	2	910
1991	651	660
1992	5555	260

1992	5555	5555
1994	5555	811
1995	2	790
1995	5555	5555
1995	5555	540
1996	2	712
1996	5555	5555
1997	385	390
1997	900	820
1998	2	434
1998	2	437
1998	2	840
1998	220	390
1998	900	920
1998	920	900
1999	2	471
1999	2	955
2000	2	110
2000	255	210
2001	2	95
2001	2	200
2001	2	360
2001	2	732
2001	200	2
2002	2	220
2002	2	860
2002	5555	5555
2002	5555	700
2002	210	702

2002	210	703
2002	220	2
2002	255	510
2002	900	703
2003	2	771
2003	2	983
2003	2	987
2003	220	115
2003	220	500
2003	220	690
2003	220	830
2003	367	690
2003	830	220
2003	5555	940
2003	5555	5555
2004	2	339
2004	2	732
2004	20	690
2004	5555	663
2005	5555	437
2004	210	115
2004	220	110
2004	220	690
2005	2	115
2005	2	360
2005	2	375
2005	2	483
2005	2	517
2005	220	690

2005	5555	516
2006	2	20
2006	2	290
2006	2	325
2006	2	345
2006	2	355
2006	2	390
2006	5555	490
2006	2	439
2006	2	666
2006	200	20
2006	200	210
2006	220	900
2006	290	2
2006	220	900
2006	290	2
2006	390	2
2006	900	220
2006	5555	690
2007	2	92
2007	2	135
2007	5555	520
2007	2	230
2007	2	325
2007	2	341
2007	135	2
2007	230	2
2007	260	210
2008	2	20

2008	2	91
2008	2	230
2008	2	290
2008	2	316
2008	2	344
2008	2	490
2008	2	591
2008	2	645
2008	5555	625
2008	20	2
2008	200	260
2008	230	2
2009	2	100
2009	2	290
2009	2	572
2009	210	481
2009	220	434
2009	375	220
2009	481	210
2009	560	220
2010	210	432
2010	210	516
2010	220	517
2010	220	955
2010	516	210
2011	220	935
2011	220	101
2011	5555	1021
2011	5555	625

2012	2	436
2012	2	581
2012	2	347
2012	2	210
2013	2	52
2013	2	56
2013	210	481
2013	481	210
2014	220	500
2014	2	438
2014	2	700
2015	220	482
2015	2	366
2015	2	368
2015	2	367
2016	220	920
2016	920	220
2016	2	433
2016	2	553
2016	255	436
2017	2	93
2017	2	367
2017	5555	5555
2017	2	368
2017	220	80

Jurisdictional Section of NATO SOFA

ARTICLE VII

1. Subject to the provisions of this Article,

- (a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;
- (b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2.—(a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include

- (i) treason against the State;
- (ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

- (a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to
 - (i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;
 - (ii) offences arising out of any act or omission done in the performance of official duty.
- (b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.
- (c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

5.—(a) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(c) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6.—(a) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(b) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7.—(a) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

(b) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of

the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

- (a) to a prompt and speedy trial ;
- (b) to be informed, in advance of trial, of the specific charge or charges made against him ;
- (c) to be confronted with the witnesses against him ;
- (d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State ;
- (e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State ;
- (f) if he considers it necessary, to have the services of a competent interpreter ; and
- (g) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial.

10.—(a) Regularly constituted military units or formations of a force shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the receiving State. The military police of the force may take all appropriate measures to ensure the maintenance of order and security on such premises.

(b) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the force.

11. Each Contracting Party shall seek such legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of other Contracting Parties, and the punishment of persons who may contravene laws enacted for that purpose.

Mlogit models using concurrent jurisdiction as the reference category

Table 6. Sending State Concerns

	(Reference: Concurrent) jurisdiction
0	
Highest Global Hostility	-0.162 (-0.22)
CINC Difference	-3.805 (-0.99)
Mutual	-4.125*** (-3.56)
_cons	1.840 (0.62)
2	
Highest Global Hostility	0.652 (1.06)
CINC Difference	0.754 (0.24)
Mutual	-1.359 (-1.81)
_cons	-2.357 (-0.87)
<i>N</i>	177

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 7. Receiving State Concerns

	(Reference: Concurrent) jurisdiction
0	
Distance from Sending State	-0.108 (-0.36)
Distance from Closest MID	-0.313 (-1.06)
CINC Difference	-2.672 (-0.81)
Mutual	-3.905*** (-3.47)
_cons	4.295 (1.31)
2	
Distance from Sending State	-0.124 (-0.47)
Distance from Closest MID	0.743* (2.03)
CINC Difference	0.0576 (0.02)
Mutual	-1.478 (-1.95)
_cons	-4.279 (-1.13)
<i>N</i>	176
<i>t</i> statistics in parentheses	
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$	

Table 8. Legal System Similarity

	(Reference: Concurrent) jurisdiction
0	
Legal Similarity	-1.290 (-1.89)
Highest Global Hostility	-0.347 (-0.45)
Distance from Sending State	-0.0440 (-0.14)
Distance from Closest MID	-0.395 (-1.35)
CINC Difference	-0.867 (-0.23)
Mutual	-4.088*** (-3.80)
χ^2_{cons}	6.683 (1.29)
2	
Legal Similarity	0.717 (1.18)
Highest Global Hostility	0.667 (1.09)
Distance from Sending State	-0.0947 (-0.38)
Distance from Closest MID	0.935* (2.19)
CINC Difference	-0.713 (-0.23)
Mutual	-1.344 (-1.72)
χ^2_{cons}	-9.818 (-1.87)
N	176
t statistics in parentheses	
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$	

Table 9. Former Colony and Jurisdictional Control

	(Reference: Concurrent) jurisdiction
0	
Former Colony	-0.0462 (-0.08)
Highest Global Hostility	-0.385 (-0.51)
Distance from Sending State	-0.163 (-0.52)
Distance from Closest MID	-0.317 (-1.09)
CINC Difference	-1.874 (-0.52)
Mutual	-3.852*** (-3.39)
_cons	6.508 (1.18)
2	
Former Colony	0.497 (0.70)
Highest Global Hostility	0.851 (1.27)
Distance from Sending State	-0.109 (-0.40)
Distance from Closest MID	0.765* (2.04)
CINC Difference	-0.280 (-0.09)
Mutual	-1.412 (-1.71)
_cons	-8.717 (-1.75)
<i>N</i>	176

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Test of Clustering By Sending State Instead of Year

Table 10. Sending State Concerns

	(1) Favor Receiving	(2) Concurrent	(3) Favor Sending
main			
Distance from Sending State	0.612 (0.860)	0.171 (0.196)	-0.058 (0.299)
Distance from Closest MID	-0.351 (0.474)	-0.128 (0.582)	0.945*** (0.120)
CINC Difference	0.401 (4.039)	0.561 (3.770)	1.377 (1.728)
Mutual	-1.579 (1.359)	2.078** (0.776)	-0.375 (0.557)
Constant	-3.921 (5.904)	-1.866 (3.790)	-7.636** (2.920)
Observations	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 11. Receiving State Concerns

	(1) Favor Receiving	(2) Concurrent	(3) Favor Sending
main			
Highest Global Hostility	-0.743 (1.187)	-0.289 (0.389)	0.767 (0.486)
CINC Difference	1.681 (3.162)	0.812 (2.364)	2.740 (1.928)
Mutual	-1.550 (1.276)	2.067*** (0.478)	-0.136 (0.569)
Constant	1.572 (5.782)	-0.185 (1.766)	-4.198 (2.463)
Observations	177	177	177

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 12. Legal Similarity

	(1)	(2)	(3)
	Favor Receiving	Concurrent	Favor Sending
main			
Legal Similarity	-1.454 (1.013)	0.084 (0.381)	1.359 (0.776)
Highest Global Hostility	-0.487 (1.351)	-0.290 (0.416)	0.813 (0.592)
Distance from Sending State	0.751 (0.892)	0.145 (0.172)	-0.098 (0.315)
Distance from Closest MID	-0.489 (0.584)	-0.131 (0.582)	1.123*** (0.208)
CINC Difference	2.839 (4.075)	0.888 (3.617)	-0.154 (1.540)
Mutual	-1.543 (1.372)	2.112** (0.757)	-0.334 (0.555)
Constant	-1.036 (9.374)	-0.336 (3.546)	-13.495** (4.185)
Observations	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 13. Colonial History

	(1)	(2)	(3)
	Favor Receiving	Concurrent	Favor Sending
main			
Former Colony	1.729** (0.664)	-0.362 (0.401)	0.507 (0.541)
Highest Global Hostility	-0.308 (1.028)	-0.329 (0.425)	1.052 (0.560)
Distance from Sending State	0.456 (0.971)	0.168 (0.195)	-0.020 (0.322)
Distance from Closest MID	-0.346 (0.414)	-0.130 (0.577)	0.966*** (0.122)
CINC Difference	4.570 (5.871)	0.619 (3.718)	0.665 (1.447)
Mutual	-0.937 (1.425)	2.043** (0.762)	-0.354 (0.476)
Constant	-2.027 (11.049)	-0.205 (3.526)	-13.157** (5.045)
Observations	176	176	176

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$