

Security, Sovereignty, and Justice in U.S. Overseas Military Presence

Andrew I. Yeo

Abstract

Have states become more sensitive to issues of sovereignty and justice when hosting foreign troops over time? At first blush, the answer appears obvious. The tendency for host nations is to make more, not less, demands for sovereignty and justice over time. Likewise, U.S. military planners have also become more sensitive to issues of sovereignty and justice in both war and peacetime. This article systematically explores whether demands for sovereignty and justice have increased in the twenty-first century, and if so, what trade-offs the U.S. military and host nations face in the balance between security objectives on one hand and respect for sovereignty and justice on the other. Evidence from status of forces agreement (SOFA) negotiations, protest events data, civilian casualty data, and military documents and treaties chronicling shifts in the conduct of military operations do suggest that issues of sovereignty and justice matter more today to host nations and the U.S. military than in the past. This pattern holds across different regions and in both conflict and non-conflict settings. However, it is less clear to what extent greater demands for sovereignty and justice present trade-offs with security goals. Evidence from case examples are primarily drawn from U.S. military presence and operations in Afghanistan, Iraq, South Korea, Japan, and the Philippines.

Introduction

In South Korea, two teenage girls walking home from school on June 13, 2002, were crushed to death by a U.S. military armored vehicle. Ruled as an on-duty accident, a U.S. military court acquitted the two soldiers operating the vehicle of all charges. The incident triggered weeks of mass protests, fueling anti-American sentiment and prompting a national outcry against perceived inequalities in the U.S.-South Korean alliance. In Afghanistan, U.S. airstrikes targeting Taliban insurgents in April 2007 reportedly killed forty-two non-combatants. A week later, airstrikes ordered by U.S. Special Forces killed twenty-one civilians. The following week, U.S. soldiers opened fire in response to a suicide attack on their convoy killing nineteen civilians (Gall and Cloud 2007). The string of unfortunate incidents triggered angry protests from Afghans demanding justice and greater accountability. President Hamid Karzai publicly voiced his displeasure with mounting civilian fatalities and the Afghan Parliament expressed their increasing anger towards foreign troops.

In peacetime or in wartime, both anecdotes highlight the salience of sovereignty and justice in the presence of U.S. overseas military forces. Has the salience of sovereignty and justice increased for both host nations and the U.S. military in the post-Cold War period or is this merely the effect of increased media coverage and better reporting of tragic incidents in the 21st century? Additionally, if the salience of sovereignty and justice has increased in recent years, what trade-offs, if any, do the U.S. military and host nations face between security objectives on one hand and respect for sovereignty and justice on the other? Evidence from status of forces agreement (SOFA) negotiations, protest events analysis, and shifts in the

conduct of military operations in peace and wartime do suggest that host governments and the U.S. military have become more sensitive to issues of sovereignty and justice today relative to the past. However, it is unclear to what extent concerns over sovereignty and justice hinder security objectives. Although trade-offs may exist in the short term, the increased salience and scrutiny of sovereignty and justice issues may not necessarily impede U.S. security goals in the long term.

Issues of sovereignty and justice carry important political and theoretical implications regarding overseas U.S. military presence and the relationship between host nations and the United States. Over half a million U.S. soldiers are spread across nearly seven hundred bases in forty countries (DoD 2012). If the salience of sovereignty and justice norms has indeed increased over time, this should carry significant implications on both the conduct of war and the deployment pattern of U.S. forces. The arguments here also provide greater conceptual clarity to abstract concepts such as sovereignty and justice in the context of U.S. military presence by drawing on empirical evidence to explore shifts in the salience of both concepts over time. Moreover, issues of justice and sovereignty are examined from a comparative perspective looking at examples across regions and within conflict and non-conflict settings.

The remainder of this article is organized as follows. The first section introduces the concepts of sovereignty and justice both generally and in the specific context of U.S. overseas military presence. In section two, I discuss trends in sovereignty and the bargaining power of host nations by examining two issues central to sovereignty: basing agreements and status of forces agreements (SOFA). I then turn to trends in justice in section three, reflected in data on civilian casualties in Afghanistan and anti-U.S. military protests in Japan and South Korea. Section four raises counter-arguments against the evidence provided in support of increased attention to sovereignty and justice. Section five provides further discussion on the relationship between security, sovereignty, and justice and the possible trade-offs faced by policymakers when either deploying or hosting U.S. troops.

Sovereignty and Justice in the Context of Overseas U.S. Military Presence

Have states become more sensitive to issues of sovereignty and justice when hosting foreign troops over time? At first blush, the answer appears obvious. Sovereignty norms, linked closely to norms of decolonization, have strengthened since 1945 (Crawford 2002). Decolonization movements in the 1950s and 1960s reinforced the powerful ideas of statehood, territorial integrity, and Westphalian sovereignty (Philpott 2001; Zacher 2001; Finnemore 1996). From Spain and Portugal to South Korea and the Philippines, dozens of host governments that signed basing or status of forces agreements (SOFAs) with the U.S. during the early Cold War years, negotiated for greater sovereignty rights over time. Furthermore, anti-U.S. base movements that rarely existed in the immediate post-war era have developed in different parts of the world (Yeo 2011; Lutz 2009). Although the sense of injustice borne on victims (or families of victims) of U.S. military-related crime or accidents may not be any greater today than sixty years earlier, media accounts do suggest that the level of public outcry demanding justice has heightened. Likewise, U.S. military planners, whether in reaction to host nation demands or a shift in their own normative or strategic thinking,

have also become more sensitive to issues of sovereignty and justice. Compared to the Korean or Vietnam Wars, the U.S. military in Afghanistan and Iraq has taken careful measures to reduce civilian fatalities and limit mishaps to win over the “hearts and minds” of the local populace. The evidence, however, does not all point towards greater concerns regarding sovereignty and justice. The U.S. still retains exclusive jurisdiction over its troops in significant parts of the world. For example, SOFAs with new partners in Central Asia and Sub-Sahara Africa are characterized by exclusive rather than shared jurisdiction. Even if the general trend is shifting towards sovereignty and justice, it is uncertain if this trend has any direct bearing on U.S. military practices abroad. Additionally, rather than any real shift taking place, the *perception* of this shift may stem from elsewhere, such as broader media coverage of U.S. military opposition through cable news, the internet, and social media. Whether sovereignty and justice matter more than they did in the past, and whether their salience has risen at the expense of security therefore requires further investigation.

Sovereignty

The concepts of sovereignty and justice are broad, abstract, and contested. Whether sovereignty and justice claims have increased over time therefore depend in part on what we mean by these concepts in the specific context of U.S. military presence. I begin with sovereignty, a concept more relevant to states than individual actors. Stephen Krasner (1999:3) identifies at least four types of sovereignty: Westphalian sovereignty, international legal sovereignty, domestic sovereignty, and interdependence sovereignty. In this article, I am primarily concerned with Westphalian and domestic sovereignty, the two forms of sovereignty most likely contested by U.S. overseas military presence. Although supported by international legal agreements, the presence of foreign troops violates the Westphalian notion of sovereignty which is based on the “exclusion of external actors from authority structures within a given territory” (Krasner 1999:4). In this instance, international legal sovereignty (under SOFAs) undermines the Westphalian notion of sovereignty. It is precisely the “violation” of Westphalian sovereignty that makes U.S. bases and troops powerful symbols of opposition to foreign military presence.

In addition to Westphalian sovereignty, host governments seek to legitimize and exercise their authority within their own borders. Issues of domestic sovereignty are therefore of particular concern to host government elites. As witnessed in President Karzai’s statements criticizing U.S. and NATO airstrikes, or Prime Minister Nouri al-Maliki’s comments about sovereignty during negotiations over the U.S.-Iraq SOFA, political leaders want to credibly demonstrate authority and control over their nation’s security. From the perspective of the public, the inability of their own government to seek “justice” for crimes, pain, or suffering inflicted by members of a foreign military, violates the state’s authority to consolidate political control within its own borders.

Justice

The concept of *justice* is broader in scope than sovereignty. In this article, I adopt a Rawlsian view of justice in which justice is viewed “in terms of the demands of fairness” (Sen 2009:53; Rawls 1971). For Rawls, fairness is wrapped within a liberal political conception of justice centered on two basic principles. First is the equal provision of basic rights, freedoms, and liberties. Second is the fair distribution of political opportunity, wealth, and income (Rawls 1971:61-63). In the Rawlsian view, justice is not determined by the maximum utility of a particular course of action, but is instead based on the substantive nature of actions and their distributive consequences (Sandel 2008:141). In the context of overseas U.S. military presence, justice (or injustice) is used to consider a wide range of issues related to U.S. military presence and may take on both procedural and substantive forms. Procedural justice suggests a “correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed.” (Rawls 1971:83-89). Fairness is embedded in the *process* of settling disputes or distributing resources (Rawls 1971:74-76; Schaefer 2007:167). Examples of procedural justice include accountability and impartial judgment of criminal acts committed against local civilians, damage to private property, or negative externalities borne by local communities.

Substantive justice refers to the content or outcome of decisions based on normative principles. Injustice would then suggest violations of moral or ethical norms such as the targeting of civilians during combat (Walzer 2000). It also includes the violation of individual rights arising from acts of crime (i.e. rape, assault, theft). It should be noted that the concept of justice might not always be congruent with international law. For instance, “collateral damage” resulting from airstrikes against enemy combatants may not violate any international law. However, family and friends of the deceased may feel a sense of injustice and victimization, especially if little effort for proper compensation is provided.

Relationship Between Sovereignty, Justice, and Security

What is the relationship between sovereignty and justice? In international relations, the primary referent of sovereignty is the state. When considering justice, however, the primary referent is often the individual. This creates different types of demands from host nations. At the level of states, host governments often demand justice in the form of sovereignty transfers (or in Rawlsian terms, a fair distribution of sovereignty rights). Demands are most frequently manifest in widening the range of legal jurisdiction over foreign military presence often denoted by renegotiating SOFAs and seeking greater control (or restrictions for the U.S.) over basing rights. Additionally, states make demands to protect civilians from harm.

At the individual or societal level, host nation demands for justice often appear in the form of specific grievances stemming from U.S. military presence. During peacetime, this may entail injustices derived from externalities associated with military presence such as crime, prostitution, accidents, or pollution (Yeo 2011; Hohn and Moon 2009). During wartime, injustices are most acutely experienced through collateral damage and civilian deaths, especially if such incidents are not compensated

through proper mechanisms of justice. The sense of injustice is magnified by its source – in this case the presence of a foreign military. In such cases, injustice evokes problems of sovereignty. Figure 1 below conceptualizes the overlapping relationship between sovereignty and justice and the types of demands raised by host nations.

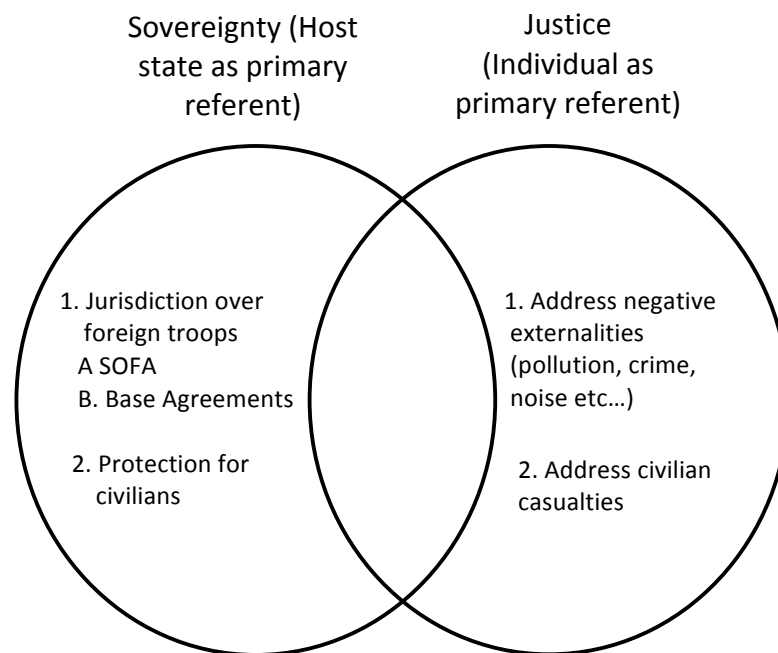


Figure 1. Types of Sovereignty and Justice Demands Raised by Host Nations

All demands are associated with both procedural and substantive justice, but for most host governments, demands are more often associated with procedural justice. For instance, after private security contractors opened fire in a public square in 2007 killing several unarmed civilians, the Iraqi government demanded formal investigations and even threatened to file civil suits in U.S. and Iraqi courts against the contractors. The Iraqi government eventually barred the security company Blackwater which had hired contractors responsible for civilian deaths, from providing any other services in the country. The process in adjudicating the degree of sovereignty rights and transfer deemed “fair” between the U.S. military and host governments is what is most often contested. On the other hand, substantive justice is more often evoked by individuals politically opposed to the U.S. or by host governments who employ sovereignty claims as a rhetorical device to placate domestic opposition to U.S. military presence. For example, host governments may criticize U.S. military actions leading to civilian fatalities and demand the ouster of U.S. forces while privately negotiating a settlement between aggrieved parties, the host nation, and the U.S. military.

Finally, procedural justice and the “fair” distribution of sovereignty may largely depend on the overall security context. Thus states are often willing to

relinquish sovereignty to foreign militaries when the very survival of the state depends on U.S. security guarantees (Krasner 1999). In such instances, fairness and justice are negotiated through hybrid forms of sovereignty, or what Cooley and Spruyt (2009) characterize as “incomplete contracts.” Rather than negotiating absolute or exclusive sovereign rights, states settle for mixed governance arrangements or split property rights (separation of use rights from control rights) with the possibility that the terms of sovereignty will be renegotiated at some future date as the security environment improves. Moreover, the context in which foreign troops are permitted inside the host state may have a bearing on the trade-offs between security, sovereignty, and justice. Issues of sovereignty under bilaterally recognized status of forces agreement, which breach only Westphalian sovereignty, are less contested than issues which arise out of conquest or military occupation which may violate multiple forms of sovereignty (international legal, domestic, interdependence). Sovereignty and justice may also be perceived differently when foreign troops are deployed in a conflict zone in a failed or failing state compared to a stable, democratic country. In times of conflict, host governments may be more amenable to negotiating away a certain degree of sovereignty in return for security or economic gains.

Trends in Sovereignty and U.S. Military Presence

Two competing claims can be made about the direction of sovereignty since 1945. On one hand, the norm of sovereignty has strengthened over time. On the other, while sovereignty norms do exist, the principle of sovereignty itself is flexible, frequently violated, and trumped by material and security interests (Cooley and Spruyt 2009; Osiander 2001; Krasner 1999; Biersteker and Weber 1996). While numerous examples exist which demonstrate the malleability and undercutting of sovereignty, the general trend in SOFAs suggest that over time the balance between security and sovereignty has shifted towards the direction of sovereignty.

Basing Agreements

Specific demands for sovereignty over U.S. military presence can be witnessed in base re-negotiation and SOFA revision processes. As Cooley and Spruyt (2009) argue, sovereignty rights outlined in basing agreements tend to shift in favor of host nations over time. Initially, the U.S. may enjoy near exclusive use rights over military bases. In places such as the Philippines, Turkey, Spain, or Japan, host governments granted the United States foreign residual rights and a wide-latitude of authority and control over facilities. In subsequent renegotiations, however, host nations criticized the terms of agreement as “unequal” or “colonial.” Domestic elites pressed for more restrictions on the use of facilities and greater residual rights. These demands were made even as the Cold War security environment remained relatively unchanged.

In the same vein, host governments demanded greater legal jurisdiction than permitted under existing SOFAs. Cooley and Spruyt (2009: 111) state, “By using their residual rights of control and bargaining leverage gained from hosting specific assets, host countries were able to extract important concessions from the United States and whittle down U.S. ‘use rights’ to the minimum required by the United States to conduct its military operations.” South Korea, Greece, Spain, Panama, Japan, and the

Philippines are just a few cases where governments redefined sovereignty rights over time, bringing greater “equality” to the terms of SOFAs and basing contracts (Cooley and Spruyt 2009; Hashimoto et al. 2005; McDonald and Bendahmane 1990). The bargaining power of a host nation rises as the sunk costs of U.S. bases generate increasing strategic returns for the United States. Put simply, increasing U.S. dependence on the host government for global basing access helped host governments extract greater sovereignty rights and other material *quid pro quos* from the United States.

I use base negotiations between the United States and the Philippines from 1947-1991 as an example illustrating greater demands for sovereignty rights. After gaining independence in 1946, the two countries signed the United States-Republic of Philippines Military Bases Agreement (MBA) in 1947 which gave the U.S. rent free “certain lands of the public domain” for a period of 99 years. The MBA included twenty-three military installations covering approximately 250,000 hectares (Simbulan 1989: 23). The U.S. also retained exclusive sovereignty rights over its bases. This included jurisdiction of Filipinos employed on the bases.

Between 1947 and 1991, the MBA underwent at least forty amendments which returned base land to the Philippines and provided the Philippine government greater control over U.S. bases (Republic of Philippines, Foreign Service Institute 1989). The first major amendment came into effect under the 1959 Bohlen-Serrano Memorandum of Agreement. Under the memorandum, the U.S. returned seventeen base sites totaling 117 hectares to the Philippines. In a later addendum, the Philippines included a clause requiring “prior consultation” for use of bases for military operations outside the scope of the Mutual Defense Treaty and the Southeast Asia Treaty Organization (Simbulan 1989: 24). Gaining additional sovereignty rights under the 1965 Mendez-Blair Exchange of Notes, the Philippines received exclusive jurisdiction over Filipinos committing offenses on-base with the exception of offenses committed against the property or security of U.S. personnel and their dependents. Additionally, the U.S. transferred control of Manila Port and Olangapo city to the Philippines.

The terms of the MBA shifted in 1966 under the Ramos-Rusk Agreement. The agreement reduced the base term limit from ninety-nine to twenty-five years, setting the MBA’s expiration date to September 16, 1991. Then, in 1979, the U.S. transferred nominal control of U.S. bases to the Philippine government through the Romulo-Murphy Exchange of Notes. The Philippine flag would now fly over U.S. bases with a Philippine commander appointed to head each installation (Cooley and Spruyt 2009: 123). Both sides agreed to review the MBA every five years until its termination.

Wresting away further control from the U.S., the revised Philippine Constitution in February 1987 gave the Philippine Senate considerable influence over the retention of U.S. bases after 1991. Under Section 25, Article 18, the revised constitution stated, “After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum” (Constitution of the Republic of the Philippine, Section 25, Article 18). The decision to put the fate of U.S. bases in the hands of Philippine

Senators prompted heated debates within the Senate and across the country as the MBA approached its expiration. Backed by anti-base protestors, nationalist Senators, desiring to put an end to this “neo-colonial” arrangement, ousted the American military in a 12 to 11 vote against base renewal (Salonga 1995). In sum, where the 1947 MBA provided the U.S. nearly “unchecked sovereignty” over its facilities, subsequent renegotiations transferred sovereignty to the Philippines. The upward ratcheting of sovereignty demands placed significant restrictions on American use rights, with the Philippines eventually regaining full sovereignty at the end of 1991 (Cooley and Spruyt 2009: 122).

Status of Forces Agreements (SOFA)

The direction of SOFA renegotiations also sheds light on trends in sovereignty in light of U.S. military presence since World War II (Mason 2009; Erickson 1994). SOFAs designate the legal status of the U.S. military in a foreign country. The United States is currently party to over one hundred bilateral and multilateral agreements, which outline the rights and privileges of U.S. personnel in foreign countries (Mason 2009: 1). These agreements address when and how the domestic laws of other countries are applied to U.S. personnel. SOFAs thus provide the framework for legal protection and rights of the U.S. armed forces while stationed abroad. It should be noted that the purpose of SOFAs is not to immunize U.S. personnel from criminal sanctions, “but to apply military discipline which takes into account status, custom, and military needs” (Erickson 1994: 40). In theory, SOFAs share the sovereign prerogative between the receiving and sending state, striking a balance between the rights and obligation of both parties (Erickson 1994: 40).

The most common and perhaps controversial issue covered in SOFAs is criminal jurisdiction over U.S. personnel. Different SOFAs vary in the degree of jurisdiction given to the U.S. On one end, exclusive jurisdiction provides U.S. soldiers immunity from local processes. Host states must file a formal extradition warrant to the U.S. to gain custody of U.S. personnel. On the other end is concurrent or shared jurisdiction. Shared jurisdiction, however, appears in many different shades. With some SOFAs, primary authority over U.S. personnel is based on “a number of defined categories, procedures, and norms” (Cooley 2008: 44). Ideally, however, shared jurisdiction “recognizes in principle the full extent of jurisdiction” conferred by the host state and sending state (Stambuck 1963: 478). In overlapping areas of jurisdiction, the sending state has primary jurisdiction over offenses committed on-duty, and the host state on all other offenses (Stambuck 1963: 478).

One testable hypothesis which might suggest the growing demand of sovereignty from host nations is the frequency in shifts from exclusive to fully concurrent jurisdiction during SOFA renegotiations. In the 1950s and early 1960s, a number of bilateral SOFAs between the U.S. and host nations were exclusive in nature. Even “concurrent” SOFAs during this period granted the U.S. near immunity. For example, where the U.S. recognized concurrent jurisdiction in principle in places such as Libya, Greece, and the Netherlands, host states “in general agreed to waive their primary rights” (Stambuck 1963: 478). Furthermore, in several instances, the U.S. carved jurisdiction rights in specific locations, particularly in areas where U.S. personnel were found present on or off-duty. The addition of these clauses turned

concurrent jurisdiction SOFAs into *de facto* exclusive ones (Stambuck 1963).

Host nations negotiating bilateral SOFAs with the U.S. in the aftermath of World War II undoubtedly lacked equal bargaining power against the U.S. Many of these countries were liberated or occupied by the U.S. military. However, as with basing agreements over time, host nations have demanded greater jurisdiction rights. The permanent presence of U.S. troops and the U.S. military's "predominant exercise of criminal jurisdiction over its members" were seen by some domestic factions as a shameful affront to national sovereignty (Eichelman 2000: 27). This sentiment only increased as Cold War security threats subsided. One scholar argued, "In the future, foreign politicians might not be so willing to acquiesce to U.S. demands on non-reciprocal SOFAs. The United States might have to offer reciprocity in exchange for the jurisdictional concessions it wants from the receiving state" (Eichelman 2000: 27). In recent years, a number of factors, including the end of the Cold War and conflicting values and priorities of allies, have led to changing international attitudes regarding SOFA provisions. An official with the Judge Advocate General's Corp (JAG) noted, "United States' SOFA allies are now less likely to view the presence of large numbers of U.S. troops as a necessity, and are more likely to see them as infringing on sovereignty" (Eichelman 2000: 26).

The shift in attitude towards SOFA, and more broadly, sovereignty rights, can be seen in SOFA renegotiations between the United States and South Korea. United States Forces Korea (USFK) assumed its permanent presence in South Korea at the end of the Korean War in 1953. However, it took thirteen years before both sides could successfully negotiate a SOFA. Prior to this, South Korea, under war conditions, had granted U.S. forces exclusive jurisdiction over its members under the provisional Daejon Agreement signed in July 1950 (officially known as the "Agreement Relating to Jurisdiction over Criminal Offenses Committed by the United States Forces in Korea between the Republic of Korea and the United States of America). The signing of the U.S.-ROK SOFA on July 9, 1966, therefore, represented the first shift in residual rights towards the host state. Put into effect on February 9, 1967, the U.S.-ROK SOFA stipulated that crimes committed by U.S. personnel on-duty would fall under the primary jurisdiction of the U.S., while off-duty crimes would fall under the jurisdiction of South Korean authorities.

The 1966 provisions represented an improvement from the exclusive jurisdiction granted by the earlier Daejon Agreement. However, the SOFA included several stipulations severely limiting South Korea's "share" of jurisdiction. For instance, South Korean authorities were to automatically waive their primary jurisdiction over U.S. soldiers for off-duty offenses except in cases considered important to the security of South Korea (U.S. State Department 2013). Furthermore, should martial law be declared in South Korea, South Korea's criminal jurisdiction over U.S. personnel would immediately be suspended. The U.S. military would be entitled to exclusive jurisdiction until the end of martial law. In short, although the 1966 SOFA included shared jurisdiction much like the "gold-standard" NATO SOFA, the South Korean government signed away numerous concessions, which whittled away its jurisdictional power.

In the 1980s, South Korean authorities "failed to exercise effective jurisdiction over U.S. forces and properly protect their nationals" against labor rights violations

and crimes committed by U.S. personnel (Choi 2004). This prompted public calls to revise SOFA. In December 1988, Seoul approached Washington regarding SOFA renegotiations. After two years of negotiations, the final agreement, signed on January 4, 1991, revised several “unequal” articles. Among others, the revised SOFA removed the provision for automatic waiver of primary criminal jurisdiction over U.S. personnel, permitted Korean prosecutors to question or deny official duty certificates issued by the U.S. military, extended jurisdiction over U.S. civilians and their dependents for offenses normally punishable by Korean civilian courts under martial law, and included labor conditions for Korean nationals working in U.S. bases (U.S.-ROK SOFA 1991, see Amended Understandings, Article 22 and 167).

Yet shortly after the 1991 revisions, several highly publicized murders committed by USFK members in the early-mid 1990s grabbed headlines. This included the gruesome rape-murder of a bar hostess in 1992, and the murder of a South Korean student inside a Burger King restroom in 1995. In several of these cases, soldiers either fled the country or evaded arrest from South Korean authorities. U.S. and South Korean officials discussed revising SOFA terms once again in November 1995. South Korean negotiators were particularly keen in claiming wider criminal jurisdiction. At the time, the current SOFA provisions stipulated that U.S. soldiers accused of crimes would be placed in the custody of the Korean authorities only *after* conviction. This loophole created opportunities for U.S. soldiers awaiting trial to flee the country. However, South Korea requested that suspects be handed over at the time of indictment.

For various reasons, the negotiations came to a standstill. Partially in response to civil societal action, the Kim Dae-Jung Administration reopened calls for negotiations in April 1999. Parliamentary leaders also urged the South Korean government to take a resolute stand on SOFA revision negotiations, sponsoring a bipartisan resolution to revise the U.S.-ROK SOFA to the standards of the NATO SOFA. After several rounds of intense negotiations, the two sides signed an agreement on January 18, 2001. The U.S. agreed to transfer U.S. suspects to South Korean authorities at the time of indictment, limited to twelve cases of major crimes such as murder, rape, arson, robbery with a dangerous weapon, or drug trafficking (U.S.-ROK SOFA 2001, Article 22). Custody of U.S. personnel would be granted to South Korea even in cases where arrests were to be made by U.S. military authorities. Unsurprisingly, civil societal groups felt the revisions did not go far enough, and would again demand for revisions the following year after the death of two junior high school girls crushed to death by a USFK vehicle in 2002.

Although older Cold War alliance partners acquiesced to U.S. military demands in the early stages of their alliance, not all new U.S. partners today are likely to provide the U.S. the same degree of latitude. In Iraq, the Iraq Parliament was already calling for a timetable for U.S. withdrawal only three years after the U.S.-led Coalition Provisional Authority ceded civilian control to the interim government. Iraqis voiced strong opposition against far-reaching authorities granted to the U.S. under a draft pact of the Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship. In particular, Iraqi nationalists bristled against “unauthorized and independent combat operations against internal and external opponents, exclusive control of Iraqi airspace up to 10,000 meters altitude, and control

over security related ministries for a period of ten years” (Geneva Centre for the Democratic Control of Armed Forces 2009). After a period of political impasse, the two sides resumed negotiations by first focusing on the status of U.S. forces. Here again, the Iraqis made several demands including complete provisions for U.S. withdrawal by the end of 2011, restrictions on search and raids of homes without Iraqi approval, and Iraqi jurisdiction of U.S. troop in cases of major crimes committed off bases and off-duty. The Obama Administration was keen on ending the war in Iraq, but on the assumption that a small contingent of troops and bases would remain. However, the Iraqi government rejected such plans. Behind-the-scene discussions to hash out a legal basis for U.S. presence also never materialized. Unable to renew the SOFA, the last remaining U.S. troops withdrew from Iraq on December 11, 2011.

Afghanistan has also demanded a separate SOFA with the United States. Up until late 2008, the U.N. mandate for NATO functioned as a *de facto* SOFA agreement for NATO forces. However, U.S. forces were covered by a separate two-page diplomatic note (DeYoung 2008; Rozen 2009). After a wave of civilian fatalities in 2008, the Afghan Council of Ministers called for an agreement which would help limit air strikes, illegal detentions, and house raids by international forces (Gall 2008). President Karzai also publicly called for a formal SOFA along the lines of the U.S.-Iraqi SOFA to govern foreign troops. Although some may argue that the issue is a moot point with the combination of budget constraints and political pressure resulting in a significantly reduced U.S. presence in Afghanistan, a SOFA is still required even for a limited number of troops. As of June 2013, a separate SOFA between Washington and Kabul had yet to be negotiated with neither side providing clarity on whether or when an agreement would be produced (Zakheim 2013).

In short, unlike their Cold War predecessors, new host partners are more willing to push earlier and harder for sovereignty rights. One might argue that greater demands for sovereignty over time in countries such as the Philippines or South Korea are permitted because of reduced security threats. This would negate the argument that the balance between security and sovereignty has shifted towards sovereignty. However, Iraq and Afghanistan, two countries which continue to face high security threats (even if reduced from peak periods of violence) suggest that sovereignty matters a great deal to host governments, regardless of whether security is scarce or plentiful.

Trends in Justice and U.S. Military Action

Issues over sovereignty arising from U.S. military presence in host nations are intimately linked to issues of justice. Violation against state sovereignty may itself be viewed as an act of injustice. However, the scope conditions which sovereignty falls under are more restrictive than that of justice. Whereas violations in sovereignty are directed primarily at states, injustice can be directed at or perceived by a much wider range of actors including states, groups, or individuals. In this section, I explore trends in justice located primarily at the individual level. Of course, when acts of injustice such as civilian casualties, destruction of personal property, or rape are committed by individuals, these acts may later be framed as a broader issue of national sovereignty. However, the concept of (in)justice is more often associated with

actions directed against or perceived by individuals.

Have host nations demanded greater accountability and justice from the U.S. military in recent years? Anecdotal evidence from the frontlines in Iraq and Afghanistan suggests such a trend. Civilian fatalities have become a vexing political issue in Afghanistan with each death capable of igniting public sentiment against U.S. military presence. Moving beyond anecdotal evidence and isolated media reports, however, I examine the annual report on “Protection of Civilians in Armed Conflict” published by the United Nations Assistance Mission in Afghanistan (UNAMA), documents related to the conduct of war produced by the U.S. military, and data from the Brookings Institution Afghanistan index. To track demands for justice on U.S. military related issues in non-conflict areas, I use protest event data compiled from South Korean and Japanese newspapers from 1990-2008.

Civilian Fatalities and the Demand for Justice in Afghanistan

In Afghanistan, growing concern about civilian fatalities and their impact on support for coalition forces have prompted agencies such as UNAMA, International Security Assistance Force in Afghanistan (ISAF), and U.S. Forces in Afghanistan (USAF) to track non-combatant deaths. This is partially driven by a growing awareness that such casualties reduce support among the population for international military forces. In 2012, pro-government forces (Afghan National Security Forces and international military forces) undertook measures aimed at reducing civilian casualties. UNAMA documented a significant decrease in civilian deaths and injuries caused by military operations of pro-government forces in aerial incidents, search operations, ground engagement and escalation of force relative to the previous year even though the average number of monthly attacks directed against pro-government forces remained the same and international force levels had only decreased by 13% (Figures calculated from Brookings Institution *Afghanistan Index*, Livingston and O’Hanlon 2013).

Pro-government forces were responsible for 587 civilian casualties (316 deaths and 271 injuries), accounting for 8% of all civilian casualties in the Afghan conflict in 2012 (UNAMA 2013: 6). This represented a 46% decrease in total civilian casualties from 2011, and a significant reduction from 2007 when pro-government forces were responsible for 629 (or 41%) of the total civilian casualties recorded (UNAMA 2013: 6; UNAMA 2008: iii). Air-strikes continued to remain responsible for the largest percentage of pro-government civilian deaths. Nighttime raids and “force protection incidents” also added to this toll, although such raids were significantly curtailed by a deal signed between the U.S. and Afghanistan in April 2012 which ceded authorization of special operations raids to the Afghan government (Campbell and Shaprio 2009; Walsh 2012).

Civilian fatalities leave open the question of transparency, accountability, and justice. Afghans have demanded investigations examining civilian deaths and injuries stemming from international military forces and a system of providing restitution or *solatia* payments to victims. In hotspots contested by pro and anti-government forces, civilians are especially vulnerable to attack while their access to essential services dwindles. As UNAMA reports, “The combination of fear and anger, associated with widespread intimidation and the high number of avoidable deaths, feeds a cycle of violence and lawlessness that further undermines respect for basic norms of

humanity” (UNAMA 2008: 3). Perhaps more damaging have been incidents offensive to Afghan Muslims including U.S. soldiers burning and urinating on the Koran.

UNAMA therefore has urged key stakeholders, including the U.S. military, to take stock of rising civilian fatalities and to pursue steps to mitigate the impact of conflict on civilians (UNAMA 2008: 3). In response to this demand for greater transparency and accountability, international military forces have laid out several measures. This included streamlining command structures with all forces now underneath the Commander of ISAF Forces (also the U.S. Commander). Additionally, “refined tactical directives on force protection, air-strikes, and night-time raids” were issued in 2008 (UNAMA 2008: iii). The ISAF and U.S. Forces Afghanistan also introduced a centralized civilian casualties tracking cell to facilitate all claims of civilian casualties attributed to ISAF/US Forces Afghanistan. As the UNAMA Annual Report on Protecting Civilians states, “International military forces showed themselves more willing than before to institute more regular and transparent inquiries into specific incidents” (UNAMA 2008: iii). Relative to past wars, local populations and host governments have demanded greater accountability and transparency in response to civilian deaths and injuries sustained from U.S. military fire. The U.S. military can no longer ignore demands for justice. The push for justice, however, may also be coming from the U.S. military. The rising salience of “justice” is attested by the conduct and evolution of U.S. air campaigns. Strengthened norms against mass killings and civilian fatalities during war, coupled with technological improvements in precision guided weapons, have prompted U.S. military planners to adopt strategies minimizing civilian deaths. For instance, ISAF revised several tactical and operational procedures and initiated new policies aimed at curbing civilian casualties incurred from air-related incidents (UNAMA 2013: 38). One example was ISAF’s recent decision to add restrictions when employing indirect fire and air delivered munitions in areas containing civilian dwellings and structures (UNAMA 2013: 38). Other standard operating procedures related to force escalation were revised to limit civilian casualties resulting from ground forces. Such measures seem to have had a modest effect in reducing non-combatant deaths. Controlling for the number of U.S. troops, Figure 2 below indicates an overall decrease in the number of civilians casualties as a percentage of U.S. troop presence. More remarkable is the fact that the number of civilian casualties resulting from IAF actions declined even as the average number of monthly attacks from insurgents rose almost tenfold from 2007 (308 attacks) to 2010 (approximately 3,000 attacks) (Data obtained from Brookings Institution *Afghanistan Index*; Livingston and O’Hanlon 2013; Campbell and Shapiro 2009).

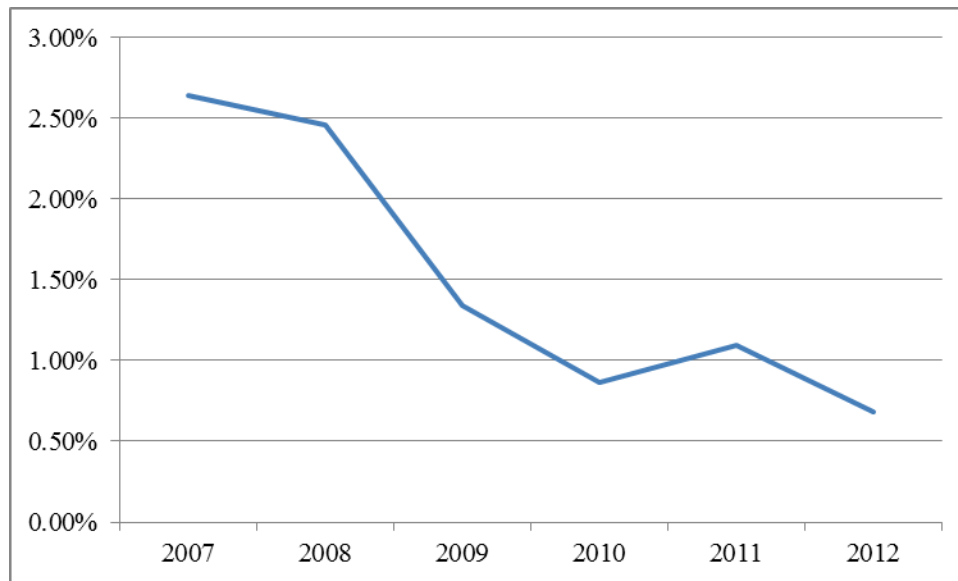


Figure 2: Civilian Casualties as Percentage of Number of U.S. Troops¹

Whether this shift is driven by norms of just war, arguments for force effectiveness, or the demands of host nation populations, the effort to limit civilian deaths should be placed in a longer-term context. For instance, during World War II, the U.S. intentionally targeted non-combatants in hopes of quickly ending war. The firebombing of Tokyo, and later the use of nuclear weapons in Hiroshima and Nagasaki resulted in 900,000 civilian fatalities (Downes 2008). U.S. strategic bombing during the Korean War also killed hundreds of thousands of civilians. In Vietnam, the U.S. no longer targeted civilians as part of its strategy, but U.S. leaders did permit *indiscriminate* bombing over North Vietnam from 1965-1968, still leading to tens of thousands of deaths. By the time of the Persian Gulf War, however, the U.S. no longer targeted civilians for attack. With improvements in technology, U.S. air planners focused on decapitation strategies targeting the Iraqi leadership (Downes 2008: 220-222). From this longer term context then, in the most recent wars in Iraq and Afghanistan, the U.S. has taken painstaking measures to reduce the number of civilian fatalities. The shift towards greater civilian protection is reflected in the latest edition of the Army Field Manual on counterinsurgency (FM 3-24) which puts a specific emphasis on population protection (U.S. Army 2006). Such changes suggest a broader institutional shift by the military to take into greater account issues relating to justice – in this case norms against indiscriminate killing of non-combatants.

It is unclear whether the shift towards “justice” by minimizing civilian casualties in conflict areas is driven from the supply or demand side. On the demand side, backlash in Afghanistan against ISAF and U.S. forces has helped transform both strategic thinking and standard operating procedures in the current counterinsurgency campaign. On the supply side, military leaders may find strategic incentives for limiting the use of force to minimize civilian casualties. Whether the U.S. military has internalized norms which prioritize population protection over immediate security objectives, or whether the military is driven by longer term strategic goals, the

salience of “justice” (here related to incidents of civilian casualties) has produced at least a moderate change over time in the conduct of war on the part of U.S. and international forces.

Anti-U.S. Military Protests and Demands for Justice in South Korea and Japan

In long-standing allied countries hosting U.S. military forces, demands for justice in peacetime have also arisen. Japan and South Korea are two countries in particular which have experienced waves of anti-base protests triggered by accidents, crime, or land disputes stemming from U.S. military presence. Of course, even during the early Cold War years, protests against U.S. military presence appeared in places such as Japan, Germany, or the Philippines. However, the frequency and intensity of protests were generally smaller during the Cold War era compared to today. At least three factors explain the rise in demands for justice from host nations. First, the end of the Cold War meant that U.S. and host government elites supporting U.S. military presence could no longer use the Soviet threat to clamp down on anti-base protests. Furthermore, with decreased threat perceptions, some elements of society saw U.S. bases as more of a liability than an asset. Second, the onset of democratization in places like South Korea and the Philippines, and the growth of a vibrant civil society opened channels for anti-base mobilization. Third, broad dissemination of information through the media and the internet enabled aggrieved citizens to reach out to the wider public.

Figures 3 and 4 below indicate the frequency of anti-U.S. military protests in South Korea and Japan. Data was collected from Korean and Japanese language newspapers. One right leaning (*Donga* and *Yomiuri*) and one left-leaning (*Hankyoreh* and *Asahi*) newspaper were selected for each country, respectively. The unit of analysis is news articles reporting protests regarding U.S. military issues.

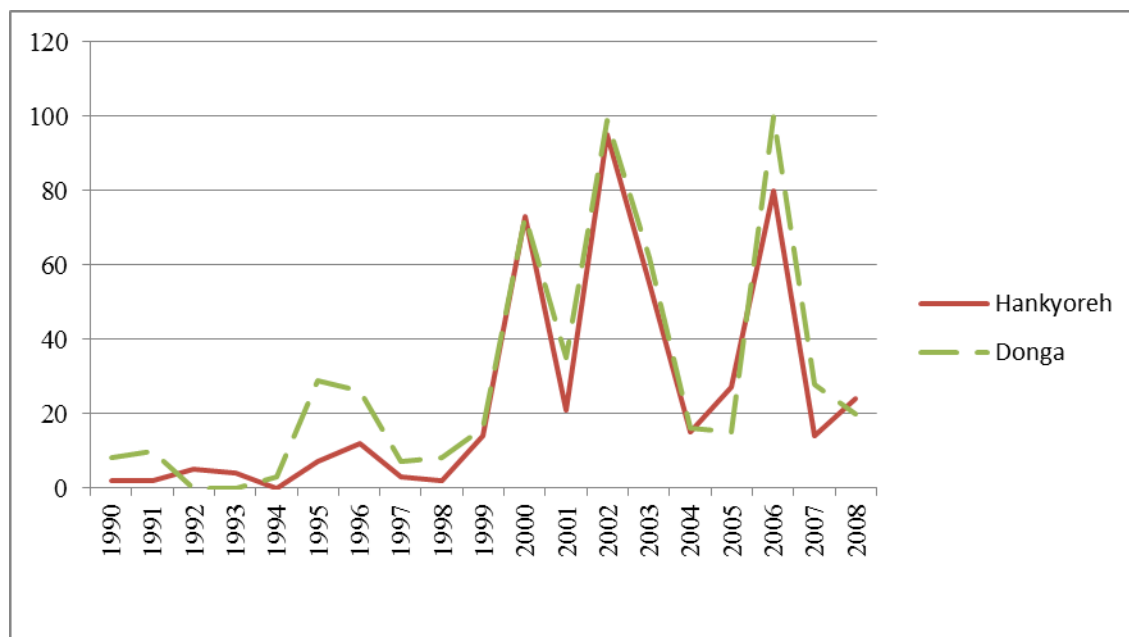


Figure 3: Anti-U.S. Military Base Protests in South Korea: 1990-2008

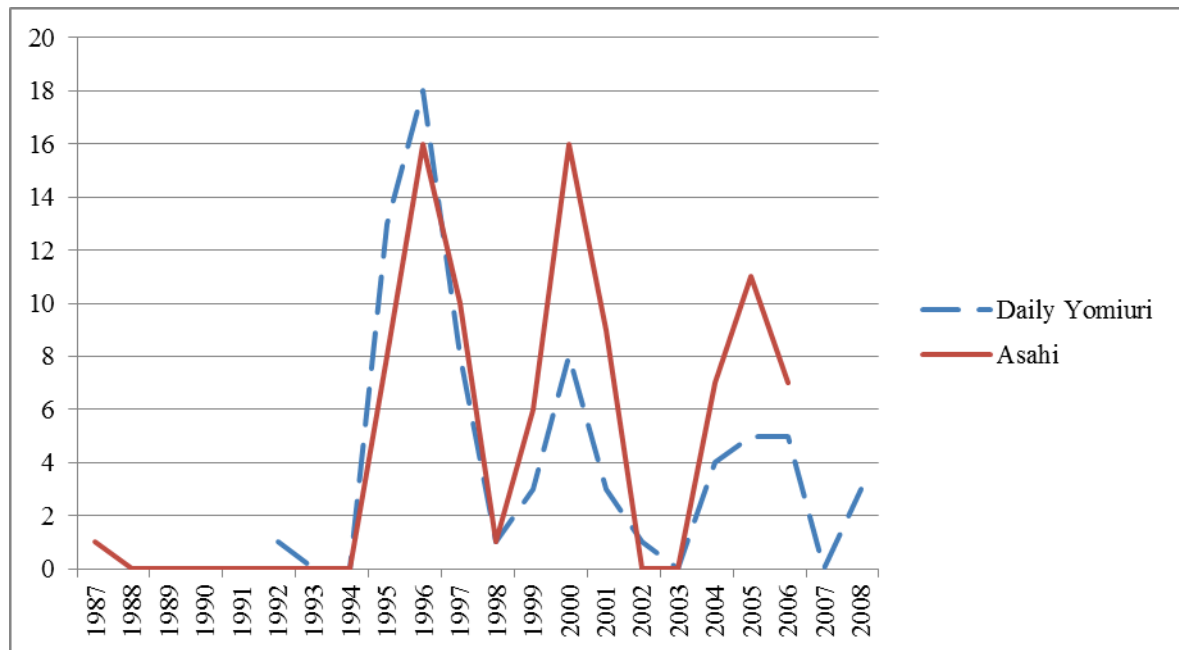


Figure 4 Anti-U.S. Military Base Protests in Japan: 1987-2008

Examining trends in Figures 3 and 4, the spikes in anti-U.S. military related protests are attributed to events which triggered large-scale protests and campaigns against U.S. military presence. For instance, in South Korea, news articles in 1995 honed in on the murder of a college student in the restroom of a Burger King and the early push by civil societal groups to revise the U.S.-ROK SOFA in response after the perpetrator fled the country. In 2000, three events took place triggering mass demonstrations. The first occurred when an A-10 aircraft released its five hundred pound payload in an emergency maneuver near Kooni Firing Range in May 2000. The second event was the nation-wide campaign to revise SOFA, spearheaded by the People's Action for Reform of the Unjust SOFA. The third incident triggering outrage was the discovery that USFK personnel had dumped formaldehyde and possibly other toxic waste into the Han River in July 2000. The spike in 2002 in Figure 3 corresponds to the candlelight vigil and protests taking place after two USFK soldiers were acquitted of charges related to the deaths of two schoolgirls run over by an armored vehicle. Finally, the rise in protests between 2005-2006 highlight the mass protests against base relocation and the expansion of a major military base south of Seoul leading to the forced displacement of local residents.

Protests in Okinawa also correspond to specific events. In Figure 4, the jump in protests in 1995 marked the beginning of the "third wave" of Okinawan protests, triggered by the abduction and gang-rape of a twelve year old girl. Subsequent cycles of opposition to U.S. military presence coincided with resistance by local residents to block the construction of an offshore facility in Henoko Bay to replace Futenma Air Station. Situated squarely in the center of urban growth in Ginowan City, Okinawans had requested Futenma's return since the 1980s. For Okinawans, Futenma represented all that was wrong with U.S. military bases: noise, pollution, safety hazards, crime, and the unfair burden of bases imposed by the Japanese government on Okinawans.

Figures 3 and 4 suggest that U.S. military related protests were fairly infrequent until after the Cold War. Although Figure 3 excludes data prior to 1990 (unfortunately the Korea Integrated News Database System and Japanese news databases did not provide articles prior to 1990) which would allow us to make comparisons with protest levels during the Cold War, it is reasonable to assume that mass demonstrations against the U.S. military were less frequent prior to 1990. National security laws prohibited South Koreans from protesting against the U.S. military. These laws still exist today, but they are not enforced to the extent that they were during the Cold War. Additionally, authoritarian rule, the acute threat of North Korea from the 1950s through the 1980s, and the still vivid legacy of America's sacrifice in protecting South Korea made it politically difficult for civil society to mobilize against the U.S. military in any significant numbers.

Although protests against U.S. military presence had appeared in Okinawa in the 1950s and 1970s, after Okinawa's reversion in 1972, no large, sustained period of mobilization against the U.S. military erupted until the 1995 rape incident (Tanji 2006: 77). The rape triggered island-wide protests, peaking on October 21 with approximately 85,000 protestors. The tragedy also brought support and sympathy from mainland Japan with calls to revise the U.S.-Japan SOFA. Since 1995, different factions with stakes to base politics have promoted or opposed U.S. military presence. Anti-base groups in turn have supported local politicians committed to reducing what they see as an unfair share of burden hosting U.S. marines relative to the rest of Japan.

I have highlighted only two cases where "justice" issues have triggered greater demands for accountability, transparency, and democratic rights, if not the withdrawal of U.S. troops since the end of the Cold War. Yet global opposition to U.S. military presence has grown over the years with "vigorous campaigns to hold the United States accountable for that damage and to reorient their countries' security policies in other, more human, and truly secure directions" (Lutz 2009: 4; Yeo 2009). This demand for justice has played across regions with major protests related to U.S. military presence and bases in the past decade taking place in countries such as Italy, Ecuador, and the Czech Republic in addition to South Korea and Japan (Yeo 2011).

Of course, resistance to U.S. military presence and demands for justice existed during the Cold War and even among NATO countries. However, as suggested earlier, the end of the Cold War, the onset of democratization in several host countries, and the rapid diffusion of information through social media have resulted in more frequent protests against U.S. military presence. While opposition to foreign troops is not driven purely by matters of justice, the salience of justice issues have risen relative to the past.

Counterarguments

Thus far, I have presented various examples and pieces of evidence pointing towards increased demands for sovereignty and justice regarding U.S. military presence. This includes examples of sovereignty transfers of basing rights, SOFA revisions and negotiations over criminal jurisdiction, media and independent reports on civilian fatalities in Afghanistan, and protest events analysis in Japan and South Korea. The cobbling of different pieces of evidence lends to criticism that I selected examples which support an increase in sovereignty and justice demands. This section addresses

the skeptic's point of view while addressing some of these problems.

First, it is unclear to what extent norms of sovereignty have strengthened since 1945. While host nations often demand greater sovereignty from U.S. influence, state sovereignty is frequently violated (Krasner 1999). These "violations" are not only permitted, but at times welcomed by host states who gain security or economic benefits by hosting U.S. forces. Moreover, states have increasingly accepted partial or hybrid forms of sovereignty. States use flexible sovereignty arrangements to facilitate order and stability when political solutions are not easily attainable in the short term (Cooley and Spruyt 2009: 9-14). Given the advantages and increasing use of short-term partial sovereignty solutions, particularly on issues pertaining to U.S. military presence in host nations, it would be difficult to make broad generalizations that norms of sovereignty have advanced in any linear direction since 1945. Furthermore, it would be a mistake to assume that host nations were more concerned about national sovereignty today than in earlier periods of history. For instance, Philippine revolutionaries fighting against the Spanish, and then the Americans at the turn of the century were no less wedded to the idea of independence and sovereignty than they were a century later.

Second, although it is true that host nations have demanded greater sovereignty rights over time as in Japan, South Korea, and the Philippines, this trend may not be indicative of all cases. The United States continues to negotiate SOFAs which provide the U.S. military exclusive jurisdiction over its personnel. For instance, the 2003 agreement outlining U.S. access and use of base rights in Djibouti grants U.S. forces a status equivalent to the U.S. embassy staff, or in other words, diplomatic immunity. Additionally, the Djibouti government grants the U.S. exclusive criminal jurisdiction over its personnel (U.S. State Department, U.S.-Djibouti Agreement 2003). SOFAs signed with several Central Asian countries, such as Uzbekistan, Kyrgyzstan, or Mongolia also provide the U.S. exclusive jurisdiction rights.

Despite increasing trends towards greater sovereignty over time, it may be the case that the U.S. ultimately "gets what it wants" – that is sovereignty status for its own citizens. Thus, rather than looking at the terms of SOFA, a different approach to measuring trends in sovereignty and justice is to examine their implementation. One example is to track changes in the rate at which host states waive their rights of primary jurisdiction when requested by the U.S. under the SOFA's concurrent jurisdiction terms.² Another angle is to examine the interpretation of SOFA agreements over time (through negotiations or legal processes).

Rather than observing any historical progression, some SOFA experts maintain that SOFAs are negotiated on a case-by-case basis. A myriad of factors, including existing security conditions, the nature and purpose of the mission, the length of stay, and the credibility of domestic legal institutions influence negotiations over jurisdiction and the status of forces. Therefore, the demand for SOFA revisions may not necessarily follow any particular pattern, or it may be attributed to other variables such as improvements in security. For example, the positive effects of the "surge" in U.S. troops may have emboldened Iraqi politicians to assert greater control over its sovereignty. Negotiations over the 2008 U.S.-Iraqi SOFA enabled the Iraqi government to assume primary legal jurisdiction over U.S. forces in cases of "major and intentional crimes" committed off-duty outside of designated areas and

installations under U.S. control. Similarly, a rise in demand for justice in South Korea, measured by a greater frequency in anti-U.S. base protests, may reflect improved security conditions or decreased threat perceptions. South Koreans are less willing to tolerate USFK crime, noise, or pollution in an era when South Korea holds clear military and economic advantages over the North.

While demands for sovereignty do not progress in a linear fashion, the default mode for host nations hosting U.S. forces is to demand more, not less sovereignty. This is true of sovereignty transfers for a wide range of countries during the Cold War period, as well as the post-9/11 era. The fact that the U.S. still manages to negotiate exclusive jurisdiction and favorable basing rights suggests that power and security imperatives still matter. However, unlike the past era of large, permanent bases, granting exclusive jurisdiction has become politically more palatable for host nations when providing access to smaller, lighter facilities with minimal U.S. troop presence. This is particularly true with new basing arrangements in sub-Saharan Africa. Thus, host nations granting exclusive jurisdiction in the post 9-11 era does not necessarily imply that sovereignty concerns have not been addressed.

Additionally, improved security conditions as an omitted variable behind increased demands for sovereignty and justice does not necessarily negate this rising trend. The trend towards greater sovereignty and justice, as argued earlier, is itself attributed to several factors. Here, I provide five potential explanations for further exploration which may help explain the trend towards sovereignty and justice. First is the end of the Cold War. Decreased security threats provided more permissive conditions for host governments, but especially civil society to voice concerns regarding sovereignty and justice. Of course host governments still demanded greater sovereignty rights, with authoritarian regimes using the sovereignty card to extract higher “rent” from the U.S. (Cooley 2008). Second, demands for justice and sovereignty arose with the wake of democratization in several countries. The democracy movement empowered civil society to later mobilize and demand justice on U.S. military related issues with less fear of repression. Third, the media and internet helped enhance public awareness of U.S. military related issues confronted by local communities. Fourth, during combat, shifts in human security norms have pushed the international community and the U.S. military to build safeguards limiting civilian fatalities. Fifth, and related to the previous argument, the shift from conventional to counter-insurgency warfare has resulted in greater scrutiny of civilian fatalities by both the U.S. military and the host polity.

Trade-offs Between Security, Sovereignty, and Justice?

What implications do increasing demands for sovereignty and justice have on the U.S. military? Is force effectiveness reduced by addressing such normative issues? In the short term, the U.S. military experiences some trade-offs between security priorities on one hand and sovereignty and justice concerns on the other. For instance, protests against Kooni Firing Range in South Korea required USFK to eventually cease using live ammunition rounds, and relocate the strafing range onto a tidal flat 1.5km from the original target. Due to limited training capabilities, USFK eventually shut down Kooni Range in 2005. In Iraq, U.S. commanders balked at restrictions on U.S. operations and mobility after partial transfer of security control to the Iraqis in July

2009. A memo circulated by Iraqis had effectively ended joint patrols between Iraqi and U.S. soldiers in urban areas of Baghdad and ordered U.S. resupply convoys to travel only at night and inside Baghdad (Londoño and DeYoung 2009). U.S. military leaders therefore remained concerned as Shiite extremist groups escalated attacks inside the capital. Likewise in Afghanistan, it took years before U.S. commanders ceded authority over raids conducted by special operations forces out of fear that additional rules of engagement would compromise the security, safety, and mission of the IAF and protection for Afghans.⁴

In the long-run, however, the trade-offs faced by the U.S. military may be less stark. Efforts to promote sovereignty and justice need not necessarily come at the expense of security. In several instances where U.S. military planners have shifted strategic or operational plans to accommodate issues of sovereignty and justice, the changes have worked to address both strategic and normative problems. For example, the restructuring of U.S. global force posture the past decade was partially in response to growing domestic opposition. At the same time, however, the 2004 Global Defense Posture Review (GDPR) enhanced force effectiveness by downsizing large, permanent bases designed to confront Soviet-era threats in favor of flexible, lighter facilities addressing new threats in the post 9-11 world. Addressing security, sovereignty, and justice issues simultaneously, Douglas Feith, Under Secretary of Defense for Policy in 2005 testified in front of the House Armed Services Committee:

We want our posture to enable more effective military operations in the future – greater flexibility for our forces, their ability to deploy powerful capabilities rapidly anywhere in the world where they are needed. We want our posture to enrich our ties with our defense partners around the world – *making it easier for us to cooperate, lightening our footprint, eliminating unnecessary irritations* (author’s emphasis), helping them as well as us to modernize our armed forces. And we want our posture to be efficient – to be affordable – with the right kind of command structures, facilities and equipment for the work that may be required in the future (Feith 2004, Testimony before House Armed Services Committee June 23, 2004)

In Afghanistan, the emphasis on population protection may prevent U.S. troops from targeting insurgents in specific circumstances or reduce the security of American soldiers who must exercise greater caution and restraint. However, military planners also stress that winning hearts and minds involves not only protection from insurgents, but also minimizing civilian casualties (See United States Army: 5-19 to 5-21). The counterinsurgency field manual advocates “practicing proportionality and discrimination” during operations which require combatants to “take all feasible precautions in the choice of means and methods of attack to avoid and minimize loss of civilian life, injury to civilians, and damage to civilian objects” (United States Army 2006: 7-6) This involves “assuming additional risks to minimize potential harm,” but with the longer term objective and hopes of waging a successful counterinsurgency campaign.

What has changed with an increase in demands for sovereignty and justice are political relations between the U.S. and long-standing host nation partners. As mentioned above, in the short term, host government demands for accountability, justice, sovereignty, or more “equal” footing in alliance relations produce additional political complications for the U.S. government, and logistical and security concerns

for U.S. personnel stationed overseas. While security may potentially erode in the near term, security interests still command high priority. Faced with trade-offs between security, sovereignty, and justice, military planners attempt to strike an appropriate “balance.” What may appear as short-term headaches may in the long-run actually improve security ties and long-term strategic objectives.

The South Korean case provides a good example. The initial uproar in 2002 over the death of two school girls in South Korea coincided with the early stages of a review of USFK base consolidation. The wave of “anti-American” protests, however, expedited what was perhaps an overdue transformation of the U.S.-ROK alliance. U.S. leaders and the American public observed “a bunch of ingrates” attempting to knock down the statue of General Douglas MacArthur in Incheon and demanding the withdrawal of USFK. As tensions escalated, the two governments launched a series of security meetings known as the future of the alliance talks (FOTA) to set forth a new vision for the U.S.-ROK alliance towards a more mature partnership (Park 2005; Snyder 2008).⁵ By acknowledging issues of sovereignty and justice, and negotiating larger responsibilities for the South Korean military, Seoul and Washington were able to weather through one of the most tumultuous periods of the U.S.-ROK alliance.

Conclusion

Following an inductive approach, this article examined whether sovereignty and justice issues regarding U.S. military presence have grown in salience for host nations and U.S. military planners. In recent years, basing access and SOFA renegotiations, frequent protests against U.S. military presence, and strong reactions and greater scrutiny of civilian fatalities from host nations and the U.S. military do suggest greater concerns for sovereignty and justice over time. Less clear, however, is whether this trend is attributed to a shift in norms as opposed to a reconfiguration of security interests. Political and strategic concerns, in addition to normative concerns, may be driving this process. For instance, in security scarce Iraq, the al-Maliki government may have trumpeted the sovereignty card to garner greater political support from Parliament. Upholding the principle of sovereignty may have only been a secondary issue.

Despite the general upward trend over time, the relevance of sovereignty and justice issues vary by case, region, and context. In the post-Cold War period, more intense, frequent demands for sovereignty and justice come from traditional alliance partners in Asia. Newer partners in Eastern Europe and sub-Saharan Africa have been more accommodating of U.S. strategic needs. Interestingly, in security scarce environments such as Iraq and Afghanistan where one would expect security to trump all other issues, host nations have demanded greater accountability, evoking both sovereignty and justice claims. The balance between security, sovereignty, and justice regarding overseas U.S. military presence resonates with a wider range of issues which intersect at the strategic and normative level. In the post-9/11 world, policy-makers are constantly confronting questions which present trade-offs between liberty and security: using harsh interrogation tactics to gain intelligence; permitting wire-tapping and racial profiling to protect homeland security; sidestepping human rights violations to foster nuclear diplomacy; or dealing with dictators and corrupt warlords to enhance stability. Although there are no easy answers, scholars and practitioners

need to evaluate and routinely update the trade-offs between strategic interests and normative values when setting policy goals intended to provide stability and security to a specific region. Global security cannot be achieved without also putting forth an effort to provide for a just international order.

Notes

1. Civilian casualties isolated to those only attributed to pro-government forces (PGF). Although I calculate the decrease in civilian casualties as a percentage of U.S. force levels rather than PGF levels, if the majority of PGF casualties stem from air strikes, than many of the casualties are a result of IAF rather Afghan National Army operations. Data on U.S. troop levels and Afghan civilian casualties obtained from Brookings Institution *Afghanistan Index* and UNAMA Annual Reports on Protecting Civilians, respectively.
2. I thank Jon Brown for this suggestion. However, even here, the link between primary jurisdiction waiver rates and any conclusion about rising demands in sovereignty is somewhat ambiguous. States which have negotiated concurrent jurisdiction may feel secure about their own sovereignty status, and therefore waive rights to minor violations. For instance, the vast majority of waivers in South Korea represent traffic violations. South Korean courts may find it time-consuming, costly, and inefficient to try USFK personnel for minor infractions. If data is publicly available, one way to work around this problem is to limit data collection to waivers for major offenses.
3. See the Agreement Regarding the Withdrawal of the U.S. Forces from Iraq and Regulating the U.S. Activities During its Temporary Presence, Between the United States and the Iraqi Government. Article XII. Although the United States and Iraq share jurisdiction, many clauses and provisions still provide the U.S. military near exclusive jurisdiction of its members.
4. Paradoxically, local Afghans may have feared for their safety and security during night time raids conducted by U.S. soldiers, thus producing feelings of injustice.
5. Alliance transformation included the withdrawal of one-third of USFK forces, realignment and consolidation of the Second Infantry Division, relocation of USFK headquarters fifty miles south of Seoul, and strategic flexibility for U.S. forces to engage in future conflicts outside of the Korean Peninsula.

Acknowledgements

For useful comments and suggestions, I would like to thank Col. Cindy Jebb, Ho-Won Jeong, Jason Lyall, and Col. Isaiah Wilson. An earlier version of this paper benefited from comments at the International Studies Association 2010 Annual Convention panel, "Confronting Challenges of the Military Today." Finally, I thank Aya Taniguchi for her excellent research assistance.

References

- Biersteker, Thomas J., and Cynthia Weber. 1996. *State Sovereignty as Social Construct*. New York: Cambridge University Press.
- Campbell, Jason and Jeremy Shapiro. 2009. "Afghanistan Index: Tracking Variables of Reconstruction & Security in Post-9/11 Afghanistan." Washington D.C.: Brookings.
- Campbell, Kurt and Celeste Johnson Ward. 2003. "New Battle Stations?" *Foreign Affairs* 82 (5):95-103.
- Choi, Jang-Jip. 2004. "Reality and image in the US-Korea relationship: strengthening the partnership." *Joint U.S.-Korea Academic Studies* 14:1-12.
- Cooley, Alexander. 2008. *Base Politics: Democratic Change and the U.S. Military Overseas*. Ithaca, NY: Cornell University Press.
- Cooley, Alexander, and Hendrik Spruyt. 2009. *Contracting States : Sovereign Transfers in International Relations*. Princeton: Princeton University Press.
- Crawford, Neta C. 2002. *Argument and change in world politics : ethics, decolonization, and humanitarian intervention*. Cambridge, U.K.: Cambridge University Press.
- De Young, Karen. 2008. "Only a Two-Page 'Note' Governs U.S. Military in Afghanistan." *Washington Post*. August 28.
- Gall, Carlotta and David Cloud. 2007. "Afghans Say U.S. Airstrikes Killed 21 Civilians." *New York Times*. May 10.
- Geneva Centre for the Democratic Control of Armed Forces. 2009. *Status of Forces Agreement between The Republic of Iraq and the United States of America*.
- Eichelman, Mark 2000. International Criminal Jurisdiction Issues for the United States Military. *The Army Lawyer* 27-50-333: 23-32.
- Erickson, Richard. 1994. Status of Forces Agreements: A Sharing of Sovereign Prerogative. *Air Force Law Review* 37: 137-53.
- Fazal, Tanisha M. 2007. *State Death: The Politics and Geography of Conquest, Occupation, and Annexation*. Princeton: Princeton University Press.
- Finnemore, Martha. 1996. Constructing Norms of Humanitarian Intervention. In *The Culture of National Security: Norms and Identity in World Politics*, edited by Peter J. Katzenstein, 153-87. New York: Columbia University Press.
- Gall, Carlotta (2008). "Afghans Want a Deal on Foreign Troops." *New York Times*. August 6.
- Gerson, Joseph, and Bruce Birchard. 1991. *The Sun Never Sets: Confronting the Network of Foreign U.S. Military Bases*. Boston, Mass.: South End Press.
- Hashimoto, Akikazu, Mike Mochizuki, and Kurayoshi Takara, eds. 2005. *The Okinawa Question and the U.S.-Japan Alliance*. Washington D.C.: Elliot School of International Affairs.
- Höhn, Maria and Seungsook Moon. 2010. *Over There: Living with the U.S. Military Empire from World War Two to the Present*. Durham, NC: Duke University Press.
- Krasner, Stephen D. 1999. *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press.
- Livingston, Ian and Michael O'Hanlon. 2013. "Afghanistan Index," Washington DC: Brookings Institution, March 19. <<http://www.brookings.edu/about/programs/foreign-policy/afghanistan-index>> Accessed March 26, 2013.
- Londoño, Ernesto and Karen DeYoung. 2009. "Iraq Restricts U.S. Forces." *Washington Post*. July 18.
- Lutz, Catherine. 2009. *The Bases of Empire: The Global Struggle against U.S. Military Posts*. N.Y.: New York University Press.
- Mason, R. Chuck. 2009. Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized? , 1-30. Washington D.C.: Congressional Research Service.

- McDonald Jr., John W. and Diane Bendahmane. 1990. *U.S. Bases Overseas : Negotiations with Spain, Greece, and the Philippines*. Boulder, CO: Westview Press.
- Osiander, Andreas. 2001. "Sovereignty, international relations, and the Westphalian myth." *International Organization* 55 (2):251-87.
- Park, Kun-Young. 2005. *A New U.S.-ROK Alliance: A Nine Point Policy Recommendation for a Reflective and Mature Relationship*. 1-34. Washington DC: Brookings Institution, Center for Northeast Asian Policy Studies.
- Partlow, Joshua. 2010. "Killing of cleric prompts outrage in Kabul and apology from coalition forces." *Washington Post*. January 29, p.A10.
- Philpott, Daniel. 2001. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations, Princeton Studies in International History and Politics*. Princeton: Princeton University Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Belknap Press.
- Republic of the Philippines, Institute, Foreign Service. 1989. "Primer on the RP-US Military Bases Agreement." Manila: Foreign Service Institute.
- Rozen, Laura. 2009. "Afghanistan seeking SOFA terms?" *Foreign Policy*, February 24. <http://thecable.foreignpolicy.com/posts/2009/02/24/afghanistan_seeking_sofa_lit_e> Accessed July 8, 2013.
- Sandel, Michael J. 2009. *Justice: What's the Right Thing to Do?* 1st ed. New York: Farrar, Straus and Giroux.
- Schaefer, David. 2007. Procedural Versus Substantive Justice: Rawls and Nozick. *Social Philosophy and Policy*. 24(1): 164-186.
- Sen, Amartya. 2009. *The Idea of Justice*. Cambridge, Mass.: Belknap Press.
- Simbulan, Roland G. 1989. *A Guide to Nuclear Philippines : A Guide to the Us Military Bases, Nuclear Weapons, and What the Filipino People Are Doing About These, Ibon Primer Series*. Manila: IBON Databank Philippines.
- Snyder, Scott. 2008. "The Future of U.S.-ROK Relations: The U.S. Approach." *Asian Perspective* 32 (2):93-113.
- Stambuk, George. 1963. Foreign Policy and the Stationing of American Forces Abroad. *The Journal of Politics* 25(3): 472-88.
- Tanji, Miyume. 2006. *Myth, Protest and Struggle in Okinawa*. London: Routledge.
- United Nations Mission in Afghanistan (UNAMA). 2008. "Afghanistan: Annual Report on Protection of Civilians in Armed Conflict" Kabul, Afghanistan: United Nations Assistance Mission to Afghanistan.
- United Nations Mission in Afghanistan (UNAMA). 2010. "Afghanistan: Annual Report on Protection of Civilians in Armed Conflict" Kabul, Afghanistan: United Nations Assistance Mission to Afghanistan.
- United Nations Mission in Afghanistan (UNAMA). 2013. "Afghanistan: Annual Report on Protection of Civilians in Armed Conflict" Kabul, Afghanistan: United Nations Assistance Mission to Afghanistan.
- United States Department of Army. 2006. "Counterinsurgency." FM 3-24.
- United States Department of State. 2003. Agreement Between the Government of the United States of America and the Government of the Republic of Djibouti on Access to and Use of Facilities in the Republic of Djibouti. Article VI
- United States Department of Defense. 2012. *Base Structure Report: A Summary of the Department of Defense's Real Property Inventory*. Washington D.C.: Office of the Deputy Under-Secretary of Defense.
- United States Department of State. 2013. *Treaties and Other International Acts Series*. Accessed June 13, 2013.

- Wafa, Abdul Waheed. 2007. "Afghans Protest After Coalition Raid Kills 6 People." *New York Times*. April 30.
- Walsh, Nick. 2012. "U.S., Afghanistan sign key 'night raids' deal." *CNN.com*. April 8. <<http://www.cnn.com/2012/04/08/world/asia/afghanistan-night-raids>> [last accessed March 20, 2013].
- Walzer, Michael. 2000. *Just and Unjust Wars : A Moral Argument with Historical Illustrations*. 3rd ed. New York: Basic Books.
- Yeo, Andrew. 2009. "Not in Anyone's Backyard: The Emergence and Identity of a Transnational Anti-Base Network." *International Studies Quarterly* 53 (3):571-94.
- Yeo, Andrew. 2011. *Activists, Alliances, and Anti-U.S. Base Protests*. New York: Cambridge University Press.
- Zacher, Mark W. 2001. The Territorial Integrity Norm: International Boundaries and the Use of Force. *International Organization* 55(02): 215-50.
- Zakheim, Dov. 2013. Get the Deal or Get Out of Afghanistan. *The National Interest*, January 13.