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FRIENDLY AND HOSTILE DEALS IN THE MARKET FOR SOVEREIGN CONTROL: A RESPONSE TO PROFESSORS BLOCHER AND GULATI

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INTRODUCTION

In their wide-ranging and thought-provoking article, *A Market for Sovereign Control*, Joseph Blocher and Mitu Gulati argue that territorial sovereignty is a commodity that can and should be subject to market forces.[1] In this Response, I first identify the two different types of deals—friendly and hostile—that can occur within a market for sovereign control. I then discuss some of the obstacles that may impede the successful conclusion of each type of deal.

In friendly deals, all of the affected parties consent to the transfer of territory from one sovereign to another. The most significant barriers to friendly deals are not legal. They are political. In the modern era, there are few (if any) incentives for national political leaders on the seller side to participate in such a market. Until these incentives change, I argue, it is unlikely that a robust market for sovereign control will develop with respect to friendly deals.

In hostile deals, one sovereign refuses to consent to the annexation of one of its regions by another sovereign. In these situations, Blocher and Gulati argue that the rules of international law should be rewritten to permit the annexation over the objections of the

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1. *See* Joseph Blocher & Mitu Gulati, *A Market for Sovereign Control*, 66 DUKE L.J. 797, 799–800 (2017).

original sovereign provided certain conditions are met. I argue that the nations of the world are unlikely to consent to the rewriting of these rules. I argue further that there is no obvious means—short of the use of force—by which these new rules could be enforced against nations that refuse to obey them. Until these rule-making and rule-enforcing obstacles are overcome, it is also unlikely that a robust market for sovereign control will develop with respect to hostile deals.

I. FRIENDLY DEALS IN THE MARKET FOR SOVEREIGN CONTROL

In a friendly deal for sovereign control, all of the relevant parties consent to the transfer of sovereignty. The existing parent nation agrees to sell the region. The new parent nation agrees to buy the region. And the population of the affected region votes to proceed with the transfer. There is nothing in customary international law (CIL) that currently prohibits nations from engaging in friendly deals.[2] If the United Kingdom and the Republic of Ireland were to work out an agreement whereby sovereign control over Northern Ireland would be transferred to Ireland in exchange for a large sum of money, subject to the approval by the people of Northern Ireland, it would be entirely permissible under contemporary CIL. This fact notwithstanding, and despite the fact that the historical record is replete with examples of friendly deals for sovereign control, they are essentially unknown in contemporary international relations.

If friendly deals are permitted under international law, and if such deals were common in the past but no longer occur today, then the question that naturally arises is why. The answer is that the practice is no longer politically viable. Blocher and Gulati acknowledge this. They observe that nations may resist the transfer of sovereignty because they view the loss of territory as a blow to their national pride.[3] Blocher and Gulati then go on to argue, however, that economic self-interest may trump national pride under certain conditions. Specifically, they argue that freely negotiated sales of sovereign control are most likely to occur when the following factors are present:

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2. 2 OPPENHEIM'S INTERNATIONAL LAW 682 (Robert Jennings & Arthur Watts eds., 9th ed. 1996); *cf.* Joseph Blocher, *Selling State Borders*, 162 U. PA. L. REV. 241 (2014) (discussing the history of friendly deals among states in the United States).

3. Blocher & Gulati, *supra* note 1, at 829.

1) Low or non-existent population in the region;
2) Economic crisis in the parent nation;
3) Identifiable physical resources in the region;
4) Simple boundaries, as in the case of islands;
5) The existence of cross-border affinities between the region and another country;
6) Linkages between regions and forms of compensation;
7) Lack of a history of violent conflict; and
8) High-functioning domestic institutions.[4]

One could debate which direction several of these factors cut. The presence of valuable physical resources in the region, for example, may actually make it more difficult to agree to a price than would be the case in their absence. Negotiations over barren tundra are likely to be less fraught than negotiations over oil fields. Overall, however, this list of factors illustrates the "best-case scenario" under which mutually agreeable transfers of sovereign control are most likely to occur. Even when many of these factors are met, however, history suggests that the political obstacles to such voluntary transfers remain formidable.

Consider the case of Hans Island. Hans Island is located between Canada and Greenland.[5] It is tiny (less than half a square mile) and uninhabited. Not counting seals, there are no known natural resources on the island. It is, quite literally, a rock in the middle of the Arctic Ocean. Over the past forty years, Canada and Denmark have squabbled as to which country owns Hans Island on a number of occasions. In 2005, the Canadian defense minister landed on the island and erected a Canadian flag.[6] Denmark responded by filing a complaint stating that "we consider Hans Island to be part of Danish territory, and will therefore hand over a complaint about the Canadian minister's unannounced visit."[7] The dispute continues to this day.

The Hans Island conflict presents a number of promising factors from the list above. The Island is uninhabited. The physical resources

4. *Id.* at 837–38.

5. Christopher Stevenson, *Hans Off!: The Struggle for Hans Island and the Potential Ramifications for International Border Dispute Resolution*, 30 B.C. INT'L & COMP. L. REV. 263, 263 (2007).

6. *Id.*

7. *Hans Off! Canada and Denmark's Arctic Dispute*, WORLDATLAS (Sept. 19, 2016), http://www.worldatlas.com/articles/hans-island-boundary-dispute-canada-denmark-territorial-conflict.html [https://perma.cc/8XVG-CV9S].

on the island are known and (presumably) easy to value. The island has clearly defined boundaries. There is no history of violent conflict between Canada and Denmark. And both nations have high-functioning domestic institutions. Hans Island would seem to be the ideal case in which one nation might be willing to sell a region to another nation for the right price. And yet the dispute endures. It seems impossible to imagine that the governments of Canada and Denmark are unaware that the sale of sovereign control is permissible. In the past, each nation has negotiated for the sale or purchase of territory.[8] Instead, it appears that each government has decided that the political costs of "losing" a piece of territory to another nation—even if that territory is a rock in the middle of the Arctic Ocean—outweigh the monetary benefits to be gained from its sale.

A similar dynamic can be seen with respect to the chain of eight islands—known as the Senkaku Islands in Japan and the Diaoyu Islands in China—located in the East China Sea.[9] These islands, like Hans Island, are small and uninhabited. Unlike Hans Island, however, these islands offer rich fishing grounds and are geographically proximate to oil and gas reserves.[10] Although the islands are currently controlled by Japan, China asserts that they have been part of its territory since the sixteenth century.[11] There is, again, no rule of international law standing in the way of a cash settlement to resolve the dispute. Such a settlement seems unlikely to occur, however, because each interested government perceives the political costs of selling territory to a rival to outweigh any possible sum of cash that might be offered in exchange.

Political scientists use the term "audience costs" to describe the penalty that a national leader incurs when he is seen to back down in an international crisis.[12] When the crisis involves a dispute over a nation's territory, the threat of such a penalty—up to and including

8. In 1916, Denmark sold several islands in the West Indies to the United States for $25 million. 2 OPPENHEIM'S INTERNATIONAL LAW, *supra* note 2, at 682. In 1870, Canada purchased a vast swath of territory known as Rupert's Land from the Hudson's Bay Company for 300,000 pounds. Michael Jeffery, *Public Lands Reform: A Reluctant Leap into the Abyss*, 16 VA. ENVTL. L.J. 79, 93 (1996).

9. *See* Carlos Ramos-Mrosovsky, *International Law's Unhelpful Role in the Senkaku Islands*, 29 U. PA. J. INT'L L. 903, 903–04 (2008).

10. *Id.*

11. *Id.*

12. *See* James D. Fearon, *Domestic Political Audiences and the Escalation of International Disputes*, 88 AM. POL. SCI. REV. 577, 577 (1994).

removal from office—is particularly serious because territorial disputes with other nations tend to galvanize public opinion in a way that many other international disputes do not.[13] As Douglas Gibler and Marc Hutchison have argued:

> Not all foreign policies will be salient to the public since crises vary so widely in their importance to the average individual. Most seizures of ships or goods by foreign powers, for example, matter little to the average individual who is unaffected by the outcome of the crisis. Contrast these cases, however, with any threat of occupation . . . of homeland territories. While rarer, these are the issues that will galvanize public opinion in the threatened state. Leader pronouncements will be watched closely by the public, and there will be less room available for the leader to maneuver during the crisis. . . .
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> . . . There is good evidence that territorial issues may be one of the most consistently salient issues to domestic populations.[14]

The long-simmering disputes over Hans Island and the Senkaku/Diaoyu Islands do not remain unresolved because politicians are unaware that sovereign territory may be bought and sold.[15] They remain unresolved because these politicians do not wish to incur the audience costs that would be imposed if the leaders were to back down. Recall that all of these islands are uninhabited. Presumably, the audience costs would be even higher if the region in question were inhabited.

When viewed through the lens of audience costs, the introduction of cash payments to these disputes seems unlikely to have a meaningful impact on a national leader's incentives to participate in a voluntary market for sovereign control, at least on the seller side.[16] The fact that

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13. Douglas M. Gibler & Marc L. Hutchison, *Territorial Issues, Audience Costs, and the Democratic Peace: The Importance of Issue Salience*, 75 J. POL. 879, 882–83 (2013).

14. *Id.*

15. *See* Stephen M. Walt, *Why Doesn't China Just Buy the Senkaku Islands?*, FOREIGN POL'Y (Sept. 21, 2012), http://foreignpolicy.com/2012/09/21/why-doesnt-china-just-buy-the-senkaku-islands-updated [https://perma.cc/3JBC-C4LA] ("The main obstacle to this obvious solution [buying the islands] is nationalism. China regards the islands as Chinese territory, so why should they pay Japan in order to get something they think is rightfully theirs? Similarly, some Japanese might regard selling the islands as an affront to their own national pride, or something like that, even though nobody in Japan is likely to live there or even get anywhere near the remote little rocks.").

16. James D. Fearon, *Rationalist Explanations for War*, 49 INT'L ORG. 379, 389–90 (1995) ("In practice, creating intermediate settlements with cash . . . often seems difficult or impossible for states engaged in a dispute. . . . [N]ineteenth- and twentieth-century leaders cannot divide up

the parent nation will receive a sum of money is of little consequence to a leader who will be pilloried and driven out of office if the territory is lost.[17] Ceding sovereign territory to another nation in exchange for cash is rarely a winning political strategy.[18] Even when Greece was mired in a devastating economic crisis and considering leaving the Eurozone, its leaders steadfastly refused to consider the idea of selling any of its islands. As one Greek politician put it: "It's an affront . . . . It's basically saying sell the memory of your ancestors, sell your history just so we can get something commercial for it . . . . This is an idea to humiliate Greeks."[19]

In short, the political obstacles to the successful conclusion of friendly deals in the market for sovereign control are immense. Blocher and Gulati acknowledge this. They devote an entire section of their Article to addressing what they call the "impossibility" argument.[20] They concede that the "attachment to land might well be resistant to pricing" and that "domestic political pressure will probably prefer acquisition or retention of territory . . . to a change in the inscrutable national balance sheet."[21] They do not, however, suggest any mechanism by which these political obstacles may be overcome. This

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and trade territory in international negotiations as easily as could rulers in the seventeenth and eighteenth centuries[.]").

17. *Pass the Hemlock*, ECONOMIST (Nov. 19, 2011), http://www.economist.com/node/ 2153 8697 [https://perma.cc/4VU5-YPE6] ("[A]s long as Greece remains a democracy, the political, and perhaps biological, lifespan of a leader who proposed hauling down the flag over even the tiniest Aegean outcrop would be measured in hours.").

18. *See* John Ibbitson, *How Will Quebec React?*, GLOBE & MAIL, Dec. 12, 2003, at A25 ("Lester Pearson, Pierre Trudeau, Brian Mulroney and Jean Chrétien all had reason to fear that they could be the prime minister who lost Quebec."); John Stevens & Tom McTague, *David Cameron Could Be Forced to Resign as Prime Minister if Scotland Votes 'Yes' to Independence, Warns Top Tory*, DAILY MAIL (Aug. 13, 2014), http://www.dailymail.co.uk/news/article-2723916/ David-Cameron-forced-resign-Prime-Minister-Scotland-votes-Yes-independence-warns-Tory. html [https://perma.cc/2S4H-GL4W] (quoting a member of parliament as saying that "[h]e would become known as the prime minister who gambled on keeping Scotland in the union and lost his gamble. [It would be] very difficult in those circumstances to see how he could continue for any very great length of time"); Rigoberto D. Tiglao, Opinion, *Aquino, the First President to Lose Philippine Territory*, MANILA TIMES (May 31, 2015), http://www.manilatimes.net/aquino-the-first-president-to-lose-philippine-territory/188031 [https://perma.cc/8MSX-GJR5] ("I was shocked at this reality that we have lost Panatag Shoal, and angry with this government . . . . I think the Chinese haven't stopped laughing at the Aquino government, rolling on the ground as they point their fingers at Trillanes and del Rosario.").

19. Simon Shuster, *Greek May Have to Sell Islands and Ruins Under Its Bailout Deal*, TIME (July 13, 2015), http://time.com/3956017/greece-bailout-selloff [https://perma.cc/4GYW-KV4B].

20. Blocher & Gulati, *supra* note 1, at 837–40.

21. *Id*. at 837.

omission is important because they suggest that the creation of a market for sovereign control has the potential to bring about real change in the real world. They note that the "practical implications [of their proposal] are significant,"[22] that their "framework suggests possible solutions . . . to . . . difficult practical questions,"[23] and that the framework "point[s] toward practical solutions by helping to identify the legal, political, ethical, or other obstacles that prevent welfare-enhancing border changes."[24] These statements notwithstanding, Blocher and Gulati devote little attention to the issue of how to persuade national leaders in seller nations to participate in friendly deals for the sale of sovereign control.[25] Until these leaders' incentives change, however, it is difficult to see how a robust market for sovereign control will develop.

II. HOSTILE DEALS IN THE MARKET FOR SOVEREIGN CONTROL

In a hostile deal concluded in the market for sovereign control, one sovereign refuses to consent to the annexation of one of its regions by another sovereign. In these cases, Blocher and Gulati argue that the annexation may occur over the objection of the parent nation so long as three conditions are met. First, the region's citizens must have been mildly oppressed by the parent nation.[26] Second, the region's citizens must vote in favor of the transfer.[27] If each of these two conditions is satisfied, then control over the region will pass to the new sovereign. The former parent nation will, however, be entitled to compensation for the loss. This payment of compensation is Blocher and Gulati's third condition.

In order to facilitate the conclusion of hostile deals, Blocher and Gulati argue that international law should be rewritten to incorporate the three conditions outlined above. Where a region's citizens have been mistreated in some manner, and wish to join up with a new sovereign, international law should mandate that they be permitted to

22. *Id.* at 804.

23. *Id.* at 805.

24. *Id.* at 804, 805, 843.

25. The international-relations literature relating to succession suggests that these workarounds are likely to vary depending on the individual circumstances of each state. *See* Ryan Griffiths, *Secession and the Invisible Hand of the International System*, 40 REV. INT'L STUD. 559, 580–81 (2014).

26. Blocher & Gulati, *supra* note 1, at 819–20.

27. *Id.* at 819.

do so. At the same time, international law should also mandate that compensation be paid to the former parent nation. Once these rules are implemented, Blocher and Gulati argue, they will help to bring about the creation of a market for sovereign control by making it easier for nations to acquire territory over the objections of other nations.

It is possible, though by no means certain, that the act of rewriting the rules of international law to incorporate these rules would be welfare enhancing. It is, however, difficult to envision a scenario under which any of these rules would ever be accorded the status of law in the international system. International law rests on the foundation of state consent.[28] The two primary sources of international law are treaties and CIL.[29] Treaties are written agreements between sovereign nations.[30] CIL is created by widespread state practice that is undertaken out of a sense of legal obligation.[31] If a state refuses to ratify a treaty, or if it persistently objects to a rule of CIL, then it will not be bound by that rule because it will have withheld its consent.[32] In order for the rules proposed by Blocher and Gulati to take effect, therefore, the states against which these rules may someday be enforced must consent to their creation. In effect, these states must voluntarily commit themselves ex ante to a set of rules that could lead to their dissolution ex post.[33] Since the overriding goal of sovereign states in the international system is self-preservation, it is not clear why any existing state would ever grant its consent to such a rule.[34] Why would any

28. ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 4 (2005).

29. 1 OPPENHEIM'S INTERNATIONAL LAW, *supra* note 2, at 25–36.

30. *Id.* at 31.

31. *Id.* at 25–27.

32. This is the persistent-objector doctrine. *See* Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT'L L. 757, 765 n.90 (2001). Many would argue that all states are bound, regardless of consent, by norms that have attained the status of *jus cogens*. *See* Connie de la Vega, *Jus Cogens*, *in* 3 ENCYCLOPEDIA OF HUMAN RIGHTS 301, 301 (David P. Forsythe ed., 2009). This is the basis for the doctrine of remedial secession, which gives regions the rights to secede if their inhabitants are subjected to widespread human rights violations. *See* Christopher J. Borgen, *The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia*, 10 CHI. J. INT'L L. 1, 9 (2009). Claims of "mild" oppression, however, do not constitute *jus cogens* violations and hence are not exempt from the consent requirement.

33. *See* John Hickman, *The New Territorial Imperative*, 29 COMP. STRATEGY 405, 409–10 (2010) ("Sovereign territorial states appear 'hardwired' to acquire additional territory when opportunities arise because new territory represents potential additional power resources in their interaction with other states.").

34. EMMERICH DE VATTEL, THE LAW OF NATIONS bk. I, ch. 2, § 16 (1854) ("[E]very nation is obliged to perform the duty of self-preservation."); Richard A. Falk, *Book Review: Philosophy*

nation agree to be bound by a rule that would make it easier for rival nations to poach its territory over its objections?

Even if these proposed rules were to come into existence somehow, moreover, it is not clear who would enforce them against non-compliant states. If a parent nation refused to permit a region to exit in exchange for consideration, what remedies would be available to the region? Although they are not explicit on this point, Blocher and Gulati seem to contemplate a role for international tribunals in enforcing these rules against non-compliant parent nations.[35] If a parent nation is unwilling to permit a region to break away in the first instance, however, then it is not at all clear why it would change its position in response to a decision by an international tribunal.[36] To be sure, the threat of force may induce compliance with these rules. The very need to threaten force would, however, undo many (if not all) of the benefits of the market framework that Blocher and Gulati propose.

Consider a scenario in which Tibet wants to secede from China and become a part of Nepal. The citizens of Tibet have legitimate complaints of oppression. Against all odds, China permits the citizens of Tibet to hold a referendum.[37] In this referendum, the citizens of Tibet vote overwhelmingly to join Nepal. A consortium of wealthy nations offers to pay a massive sum of money to China to compensate it for the loss of Tibet. In response, China refuses to accept the money,

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of International Law, 102 AM. J. INT'L L. 902, 907 (2008) (arguing that the efficacy of international law has been "fatally undermined in the modern era by its overriding . . . embrace of an unconditional, sovereign right of self-preservation as the final arbiter of behavior in world politics"); Oscar Schachter, *The Nature and Process of Legal Development in International Society*, *in* THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY DOCTRINE AND THEORY 745, 748 (R. St. J. Macdonald & Douglas M. Johnston eds., 1991) ("In the present society of sovereign states, the most promising candidate for [their] supreme interest would be self-preservation of the state.").

35. *See, e.g.*, Blocher & Gulati, *supra* note 1, at 821 (suggesting that if a parent nation were dissatisfied with the market-determined price for an exiting region, it could seek review by an international body such as the International Court of Justice).

36. The parent nation could, moreover, prevent the tribunal from hearing the dispute by refusing to consent to its jurisdiction. *See* Monetary Gold Removed from Rome in 1943 (Italy v. Fr./UK/U.S.), Judgment, 1954 I.C.J. Rep. 19, 32 (June 15); Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 832 (1997).

37. In the real world, China would assuredly take steps to ensure that no referendum were ever held. The ability of a parent state to block a referendum in the region—an essential component in Blocher and Gulati's proposed framework—represents still another obstacle that would need to be addressed in order for hostile deals to proceed over the objection of the current parent state.

ignores the results of the vote, and deploys several brigades to patrol the border between Nepal and Tibet. China announces to the world that Tibet is a part of China and will remain a part of China. Nepal knows that it would lose any military conflict with China. No other nation is willing to intervene militarily on Tibet's behalf. What is the most likely outcome? Tibet remains a part of China. Significantly, this is the most likely outcome *even if* the fact that the rules proposed by Blocher and Gulati have formally become a part of international law and all of the conditions for a transfer pursuant to those rules have been satisfied. The existence of a valid and binding international-law rule relating to sovereign control is, in short, meaningless in the absence of a valid and effective mechanism for enforcing that rule against nations that refuse to comply.

This is not the only enforcement challenge implicated by Blocher and Gulati's proposal. If a nation has successfully annexed a piece of territory from another nation over its objections, how can the nation on the losing end of the transfer force the new parent nation to pay compensation? This question is presented in the ongoing dispute over Crimea. On March 16, 2014, the residents of Crimea voted to leave Ukraine and become a part of Russia.[38] The Ukrainian government protested the legitimacy of the vote and argued that the secession was illegal. Russia ignored these protests and quickly moved to assert military and political control over Crimea. Under Blocher and Gulati's framework, Russia would be obligated to pay compensation to Ukraine. Russia does not, however, want to pay such compensation. Indeed, it will vigorously resist any attempt to force it to do so. Ukraine will argue that Russia must pay. Russia will refuse. Ukraine will insist. Russia will again refuse.

At this point, Ukraine will have only two options. First, it could go to war with Russia. This course of action may not be attractive for any number of reasons, not the least of which being the very real possibility that Ukraine would lose the war and suffer a further loss of territory. Second, Ukraine could ask an international tribunal to force Russia to pay it the compensation that it is owed. Russia is, however, unlikely to agree to submit the dispute to an international tribunal.[39] Even if CIL

38. Thomas D. Grant, *Current Developments: Annexation of Crimea*, 109 AM. J. INT'L L. 68, 69 (2015).

39. A possible exception, as noted above, is when massive human rights violations trigger a right of remedial secession. *See supra* note 32 and accompanying text.

were somehow rewritten to give Ukraine a right to compensation, it would have no obvious means of forcing Russia to comply with its obligation to pay without resorting to force.[40]

There exist, in other words, significant practical obstacles arising from (1) the process through which international law is made and (2) the enforcement of international law against non-compliant states. These obstacles make it difficult to imagine how the hostile deals envisaged by Blocher and Gulati will come together. Indeed, one might question whether the framework that Blocher and Gulati describe is, strictly speaking, one that facilitates *market transactions*. Market transactions are generally understood to refer to voluntary exchanges between willing buyers and sellers. Friendly deals, in other words. To describe a payment by Russia to Ukraine to compensate it for the annexation of Crimea as a market transaction is to stretch the definition of that term to its breaking point. An ex post payment to compensate one actor for property that has been seized by another is typically characterized as a tort remedy, not a market transaction. Another way of conceptualizing the framework that Blocher and Gulati propose, therefore, is as a system of *compensated takings*.[41] Assuming certain conditions are met, one nation may legally annex the territory of another. The nation whose territory is taken shall, however, be entitled to a remedy in tort for damages. This arrangement may be welfare enhancing. It may lead to beneficial cross-border competition

40. In the specific case of Crimea, Ukraine could (in theory) ask the English judge overseeing a dispute between itself and Russia relating to a $3 billion loan to give it a setoff to compensate it for the loss of Crimea. *See* Elaine Moore & Neil Buckley, *Ukraine's "You Invaded Us" Debt Non-Payment Defense*, FIN. TIMES (May 27, 2016), https://www.ft.com/content/976b426c-2424-11e6-aa98-db1e01fabc0c [https://perma.cc/57EH-REB5]. In order for a judge to order such a setoff, however, he would first have to conclude that international law mandates that compensation be paid. Since Russia has ratified no treaty to that effect, and since it would almost certainly object to any attempt to develop such a rule via CIL, there would be no legal basis for the setoff, notwithstanding the fact that both states have consented to the jurisdiction of the English court. In addition, the bonds in question affirmatively prohibit set offs. In order for Ukraine to prevail on this point, therefore, it would also have to persuade the English court to disregard that particular clause.

41. This insight is implicit in Blocher and Gulati's proposal that a nation's sovereignty rights be made subject to a liability rule rather than a property rule. *See* Blocher & Gulati, *supra* note 1, at 803; *see also* Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972) (discussing distinction between property rules and liability rules).

between and among governments. It is not, however, a "market" transaction as that term is traditionally understood.[42]

CONCLUSION

International law has long recognized the ability of sovereigns to buy and sell territory in friendly deals. In the nineteenth and early twentieth centuries, such sales were common. In the years after 1945, however, they essentially ceased to occur. The sudden halt in such sales is not attributable to any new rule of international law. Nor is it attributable to a lack of awareness that they are permitted. In recent years, commentators have called for (1) the United Kingdom to sell Northern Ireland to the Republic of Ireland,[43] (2) Japan to sell the Senkaku/Diaoyu Islands to China,[44] (3) India to offer to purchase parts of Kashmir from Pakistan,[45] and (4) the United Kingdom to sell the Falkland Islands to Argentina.[46] The obstacles are political, and they are largely intractable. Until these political obstacles are addressed, it is difficult to see how a market for sovereign control for friendly deals will develop.

With respect to hostile deals in which one nation is forced to cede a region to another nation against its wishes, there is no existing rule of international law that would require the ceding nation to relinquish its sovereignty. There is also no rule that would require that a payment be made to compensate a nation that loses a region. Blocher and Gulati propose that these rules can and should change. They argue that nations should be required to cede territories to other sovereigns when

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42. In transactions that occur pursuant to a liability-rule regime, the courts will set the price and may order the exchange to proceed over the objections of one of the parties. *See generally* Dean Lueck & Thomas J. Miceli, *Property Law*, *in* HANDBOOK OF LAW AND ECONOMICS 232 (A. Mitchell Polinsky & Steven Shavell eds., 2007). In light of these attributes, some scholars have described liability-rule exchanges as "involuntary" or "non-market" transactions. *See, e.g.*, Christopher Buccafusco & Christopher Sprigman, *Valuing Intellectual Property: An Experiment*, 96 CORNELL L. REV. 1, 35 (2010); Henry E. Smith, *Property and Property Rules*, 79 N.Y.U. L. REV. 1719, 1777 (2004).

43. *See* Mary Dejevsky, Opinion, *Is It Time to Sell Northern Ireland to the Republic?*, BELFAST TELEGRAPH (Aug. 31, 2010), http://www.belfasttelegraph.co.uk/opinion/is-it-time-to-sell-northern-ireland-to-the-republic-28556047.html [https://perma.cc/RT5H-DGCQ].

44. *See* Walt, *supra* note 15.

45. Jug Suraiya, *India Should Offer to Buy 'Azad Kashmir' from Pakistan*, TIMES OF INDIA BLOGS (Oct. 29, 2013), http://blogs.timesofindia.indiatimes.com/jugglebandhi/states-estates-india-should-offer-to-buy-azad-kashmir-from-pakistan [https://perma.cc/A6VP-HPM7].

46. PETITION TO SELL THE FALKLAND ISLANDS TO PAY THE UK DEFICIT https://petition.parliament.uk/archived/petitions/26149 [https://perma.cc/2GDS-Z6TW].

the region's citizens are ill-treated and vote to exit, subject to the condition that the ceding nation be compensated for its loss. It is, however, difficult to see why the nations of the world would consent to the creation of any of these rules. Nor is it easy to see how these rules would be enforced against nations that refuse to comply or why these exchanges should be characterized as market transactions as opposed to compensated takings. Blocher and Gulati deserve credit for writing a fascinating article that explores the benefits that may flow from making it easier to transfer sovereignty from one nation to another. There are, however, a great many challenges that would need to be overcome before their vision becomes a reality.