Extending the Borders of Borders Research

The NEW 2018 Professional Training Workshop Programme

Brexit Borders and Ireland

Durham University
Extending the Borders of Borders Research

IBRU has long maintained that questions of boundary delimitation are essential to borders research, writes IBRU Director Professor Phil Steinberg. That’s why we focus much of our energy on workshops designed to assist border professionals in the cartographic and legal technologicalities employed by negotiators and arbitrators as they determine where a border gets drawn. However, we also maintain that the question of where a border is drawn is only one aspect of the bordering process. Different borders are managed in different ways, to impede or facilitate the flows of different peoples, goods, and ideas, and for different ends. These different functions are reflected in a border itself, where it is located and how it is manifested on the ground.

For one example, we can turn to the United Kingdom, where in recent months the coalition government had its greatest crisis to date because of an internal disagreement over the nature of the post-Brexit border between Northern Ireland and the Republic of Ireland. The differences were not over where the border was to be or whether there was to be a border. Rather, the differences pertained to what that border would regulate and how.

In particular, parties in the ruling coalition had differing concerns regarding the precedent that the relative “hardness” of the border might have in the context of strained relations between Northern Ireland and the Republic, between the UK and the EU, between the UK and Northern Ireland, and between the UK and its other constituent countries (most notably, Scotland).

These different functions of borders, and, more broadly, border management regimes, were made evident to IBRU this year when we received two inquiries from external parties, each requesting our services as border research experts.

Citizenship for Sale
The first enquiry was from an international consulting firm that advises entrepreneurs and wealthy individuals on how they might meet their financial or legal needs by obtaining residency or citizenship in multiple states. Of course, many individuals come by dual citizenship as the result of an effort; an individual may have citizenship in one state due to birth or heritage and then receive citizenship in a second state after residing there for a number of years. In 2017, this became an issue in Australia, when it was discovered that a number of MPs held dual citizenship (in some cases unknowingly), in violation of a provision in the Australian Constitution that forbids members of Parliament from having multiple allegiances.

However, the firm that contacted IBRU specialised in providing services to individuals who were seeking residency or citizenship in a second state so as to reap specific benefits. These benefits might range from the relatively benign (e.g. one might seek to establish one’s business in a country that provides a relatively business-friendly environment for resident investors, or one might seek a passport that permits extensive visa-free travel) to the more nefarious (tax avoidance, protection from extradition, etc.).

Estonia’s e-Residency programme, whereby individuals who pay a €150 fee become virtual residents, has attracted considerable attention. With only 1.3 million “real” residents, and almost 30,000 e-Residents, over 2 percent of Estonia’s population is now “virtual”. This situation might have bearing as one considers the ‘virtual’ residency maintained by citizens of island-states that are submerged by rising seas, or as one considers any number of other states where there is an imperfect alignment between state territory or state sovereign authority. They exist within both legal frameworks (e.g. the United Nations Convention on the Law of the Sea and the International Convention for the Safety of Life at Sea, in the case of the humanitarian aid group) and legal infrastructures and institutions (e.g. border posts, passports, naturalisation procedures, in the case of the consulting firm). But they were also much more.

For the consulting firm, borders were not only infrastructures and institutions (e.g. border posts, increased policing in the SAR Zone was not simply an assertion of power by the Libyan state but rather an assertion of the authority of the entire state system. Since there was no obviously aggrieved state, there was no party with an interest in taking legal action. Eventually, the aid group acknowledged that it (and other humanitarian aid groups) were effectively being crowded out of the region’s seas, despite the fact that those seas were a flash point for international migration, and notwithstanding what the aid group saw as neighbouring states’ failure to meet their humanitarian obligations.

Borders in Context
For the organisations that came to us with each of these enquiries, borders were actual, delimited lines on the ground (or the sea) that defined the limits of state territory or state sovereign authority. They existed within both legal frameworks (e.g. the United Nations Convention on the Law of the Sea and the International Convention for the Safety of Life at Sea, in the case of the humanitarian aid group) and legal infrastructures and institutions (e.g. border posts, passports, naturalisation procedures, in the case of the consulting firm). But they were also much more.

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As we noted on our website, IBRU has a three-part mission as a centre for borders research: “To facilitate enhanced understanding of border areas; [to] contribute to the peaceful resolution of boundary disputes; and [to] engage with broader geographic questions concerning the changing nature of sovereignty, territory, citizenship, and the political organisation of space.” In fulfilling this mission, we seek to extend our focus to the borders of borders research, and beyond…because borders have no limits.

For another example, one can turn to the other side of the Atlantic. There, The New York Times reported, despite all the attention given to failed attempts at boosting border infrastructure (e.g. President Trump’s famed wall with Mexico) and enacting border legislation (e.g. the series of proposed travel bans), the United States’ frontiers are indeed slowly being strengthened, one visa application at a time. The article reported that, due to an intensified regimen of visa interviews and increased requirements for legal needs by obtaining residency or citizenship in multiple states. Of course, many individuals come by dual citizenship as the result of an effort; an individual may have citizenship in one state due to birth or heritage and then receive citizenship in a second state after residing there for a number of years. In 2017, this became an issue in Australia, when it was discovered that a number of MPs held dual citizenship (in some cases unknowingly), in violation of a provision in the Australian Constitution that forbids members of Parliament from having multiple allegiances.

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Brexit Borders and Ireland

Since 1922, the border between Northern Ireland and the Republic of Ireland has played a significant role in the relationships - political, social and cultural - of everyone on the island. For those who live in border counties on either side, the evolution of changes to that border has meant they have had to consistently change their daily lives and routines as the nature or objective of that border evolved, writes Professor Aoife O'Donoghue of Durham Law School.

Brexit brings another wave of change to that border. While we can see that change as part of a long-term pattern, the starkness of change is perhaps most reminiscent of when the Border – as a political and legal infrastructure – first appeared in 1921. Joint membership of the EU, by both Ireland and the UK, combined with the Peace Process, has meant that the legal and security rationales for a visible border disappeared. Older border posts can still be found on minor roads, now generally in ruin. Changes from kilometres to miles, the absence or presence of both Irish and English, as well as the colour of road signs, are amongst the few visible indicators that you are entering a new country.

Life on the island evolved so that travelling to Belfast, to Dublin, to Galway, to Coleraine or to Cork for work, for leisure, to visit family is done without thought. Even inconveniences such as mobile phone roaming charges accidently incurred as one walked along a beach in Derry with Donegal in sight have recently disappeared through EU membership. Human rights infrastructure has partially developed in response to the EU, making one’s rights almost indistinguishable on either side. Although there are still key issues such as marriage equality, in most respects there is a present ease and this makes Brexit particularly disconcerting.

Brexit removes a key structure in the island of Ireland, creating a new reality. While it is still impossible to say what exactly the changes will be, change will come. Hard Brexit brings with it a hard border. World Trade Organisation rules require each customs territory – here in the UK and the EU – to impose either the same regulations and taxes on external products and services or no regulations and taxes on foreign products or services. Beyond those specifics, all customs territories protect their markets to some extent and both the UK and the EU are currently negotiating to consider how much to protect their markets from each other. Of course, beyond trade, there are political considerations that will influence how either side emerges from Brexit, and part of those considerations is Northern Ireland.

The Phase 1 Report created a new basis on which to move forward, but, even with regulatory alignment – which is the fail-safe – there will be change. The nature of the physical infrastructure is unclear – but at the very least some sort of anti-abuse measures – even with a comprehensive deal – will be necessary, as they are on any of the EU external borders, be it Norway, Switzerland or Ukraine.

The Common Travel Area does ease some of the problems for people – a fix that is not available for the UK and the rest of Europe. The Common Travel Area means that stopping people will not be necessary. But being a frontier worker may still be quite difficult, losing your job could lose you your status and the special arrangements that allow you to continue as a frontier worker. The Common Travel Area is a mix of legislation, statutory instruments, practice and a narrow treaty. Putting it on firmer grounds would give people in both Britain and Ireland more assurance as to their futures.

Borders in Ireland come in many forms. The Brexit border has yet to be determined, but on an island that has spent a considerable time deconstructing barriers, creating new ones should be avoided at all costs.
In January, courts in Egypt upheld a ruling halting a plan to transfer the Red Sea Islands of Tiran and Sanafir to Saudi Arabia which had originally been proposed by the Government of Egypt in 2016. Later in the year this ruling was overturned and the decision was reversed with the islands stated to be handed to Saudi Arabia subject to appeal and approval by Parliament.

In February it was determined that the Kenya-Somalia maritime boundary dispute will go to a full trial inform of the International Court of Justice (ICJ) after the court rejected Kenya’s preliminary objections that the ICJ lacked jurisdiction to intervene.

The President of Laos visited Cambodia in February despite troops remaining at a standoff over a territorial dispute over a Cambodian road near the border between the two countries which is yet to be demarcated.

A new United Nations envoy was appointed to resolve a border dispute between Venezuela and Guyana in which Venezuela has claimed the waters off the Essequibo, a disputed territory that borders Venezuela and encompasses more than half of Guyana. Dag Halvor from Norway was appointed to help broker a deal between the two countries. Ministry of Foreign Affairs officials from the two countries met in New York on 28 and 29 October 2017 to discuss the ongoing border dispute between the two countries. The meeting was part of the fulfillment of the mandate of the United Nations Secretary General under the Good Offices Process to “actively engage with the Governments of Guyana and Venezuela with a view to exploring and proposing options for a solution to the border controversy between the two countries”.

The new Trump administration in the USA proposed a partition of Libya which acknowledges the de facto partition that already existed. Fears arose however that this could lead to intensified conflict over the location of the boundary between the Northeast-ruled Egyptian-Russian anti-Islamist authority and the government-backed National Accord.

Troops from The Philippines were ordered to occupy uninhabited islands in the South China Sea in April in a move to claim the islands in the disputed area. The move was expected to anger China who had talked plans with the Philippines later in 2017 to address tensions in the area.

In May, Malawi announced it was intending to take Tanzania to the International Court of Justice over the disputed border across the northern half of Lake Malawi.

May also saw officials from the geological surveys of Afghanistan and Pakistan plan to use Google Maps to help settle the deadly border dispute which has been raging since 1947 when Pakistan gained independence from Britain. Afghanistan has never recognised the 1,500 km border Pakistan inherited through independence.

The Permanent Court of Arbitration in The Hague ruled in July that Slovenia should have access to international waters by means of a ‘Junction Area’ through a portion of Croatia’s territorial sea. The dispute between the two nations goes back to the 1990s and the break-up of the former Yugoslavia.

In July, Costa Rica asked the International Court of Justice to establish maritime boundaries in the Pacific Ocean and the Caribbean Sea to bring an end to its repeated border disputes with Nicaragua.

China demanded the withdrawal of Indian troops from a small area of disputed territory to end an escalating border row in late July. China claimed that Indian troops were occupying its territory, whilst both Bhutan and India maintained that the area in question belongs to Bhutan. China released a map showing the site of the dispute and their territorial claims at the India-China-Bhutan trijunction. China argued that its territory extends south to an area called Gamochen, while India says Chinese control ends at Batang La, further to the north.

A dispute between the United Kingdom and Mauritius over the disputed Chagos Islands in the Indian Ocean was referred to the International Court of Justice (ICJ) in July for ‘Advisory Opinion’. Mauritius, a former British colony that gained independence in 1968, claims the islands are part of its territory and wants the ICJ to offer its opinion on the status of the islands’ sovereignty.

The African Union (AU) planned to help to resolve the Eritrea-Djibouti border dispute by sending its peace and security commissioner to Eritrea following the withdrawal of Qatari peacekeepers from the area after Eritrea cut off diplomatic ties with Doha. The AU wants to decrease tensions after Djibouti accused Eritrea of occupying disputed land on the frontier.

Talks between Sudan and South Sudan were planned for August to resolve the ongoing dispute over the border region of Abu Shakra. Ownership of Abu Shakra remains a contentious issue after South Sudan separated from Sudan in 2011.

Guatemala voted to support the decision to hold a referendum to determine if their border dispute with Belize should go to the International Court of Justice to be settled. The go ahead has been given for the referendum to take place in April 2019.

In September, the Special Chamber of the International Tribunal of the Law of Sea (ITLOS) unanimously ruled in favour of Ghana in a three-year dispute between Ghana and Ivory Coast. The dispute concerned the delimitation of the maritime boundary between the two countries in the Gulf of Guinea and had arisen following an discovery of offshore oil and gas reserves in 2007.

Indonesia reiterates its commitment in the future to finalising its border negotiations – on both land and sea – with its neighbours. A recent Ministry statement reflected that since 2015, Indonesia has engaged in a large number of negotiations with its neighbours on border issues, including with Malaysia, Singapore, the Philippines and Timor Leste. In 2017, Indonesia ratified two maritime boundary agreements, the first on the Indonesia-Singapore maritime border and the second with the Philippines concerning the countries’ exclusive economic zones (EEZs) in the Mindanao Sea and Celebes Sea.

India and Sri Lanka showed their commitment to working together to map their maritime boundary in November. Amid ongoing tensions over the arrest of Indian fishermen by the Sri Lankan Navy, the navies of both countries began the next stage of a joint exercise to map the maritime boundary between the two countries. The first phase of the exercise was completed in May 2016.

Bahrain reignited an old border dispute with Qatar in November by claiming they have the right to take territory which was awarded to Qatar in 2001 by the International Court of Justice. Bahrain announced that they have “every right to claim what was cut off forcibly from its land and to dispute the legitimacy of the Qatari rule”. No action was taken on this claim in 2017 but it comes at a time of border tensions in the Gulf.

Tensions mounted between Egypt, Ethiopia and Sudan over Egypt's concerns over the construction of a large dam by Ethiopia in the Blue Nile which is a main tributary of the Nile River and Egypt’s main source of water. The Egyptians are concerned that the dam will reduce the flow of the Nile and consequently Egypt’s share of the Nile waters which the Egyptian nation relies on to sustain its population of around 100 million people. The hydro dam was more than halfway to completion in November and is expected to cost around $4.8 billion.
Most countries’ archives contain a wealth of material relating to international boundaries, much of which can be crucial to the understanding of boundary and territorial disputes. However, the size and complexity of many archives means that finding relevant material and compiling an accurate picture of the key issues is rarely a straightforward task.

This workshop, led by experienced archivists, researchers and case managers, is designed to help participants appreciate how archive material can be used to help build a case, and to provide practical guidance on how to make the best possible use of time available for archive research.

The workshop will also include practical sessions at The National Archives and The Royal Geographical Society.

Delimitation of a boundary in a treaty is a crucial first step in boundary-making, but on its own delimitation is of limited value. For borderland populations, boundaries rarely have much meaning until they are identifiable on the ground - and it is arguable that it is only when a boundary has been physically demarcated that it can begin to function effectively.

Led by a highly experienced team of tutors and combining classroom sessions and practical exercises, this unique workshop will assist policymakers and practitioners in developing strategies for the effective demarcation and maintenance of international boundaries in different physical and human landscapes.

IBRU will be running a workshop on Maritime Boundary Delimitation later in 2018. Further announcements with the details of our most popular workshop will be made soon. Please get in touch via email to register your interest.

To make an enquiry about our workshops, please contact the IBRU Events Team
Tel: +44 (0)191 334 1965 Email: ibru-events@durham.ac.uk
Find out more and book online at www.durham.ac.uk/ibru/workshops
Seeking nominations for the Raymond Milefsky Award

IBRU was deeply saddened by the death on 1 August 2016 of Ray Milefsky, one of the leading lights of the border studies community. A long-time employee of the US Department of State’s Office of the Geographer and Global Affairs, Ray was also a frequent tutor at IBRU workshops and a great supporter of IBRU’s mission of encouraging peaceful settlement of border disputes through education and research. For more on Ray, see tributes to him on the websites of IBRU Director Philip Steinberg (https://philsteinberg.wordpress.com/2016/08/09/ray-milefsky-1949-1967/) and former IBRU Research Director Martin Pratt (http://bordermap.com/ray-milefsky-tribute/).

Ray has kindly endowed upon IBRU an annual award to honour a leading border practitioner or organisation. The award will be administered by IBRU and selection of the awardee will be made by a committee consisting of the members of the IBRU Steering Committee and an external representative.

The award will be presented to an individual or organisation who:

• Has advanced knowledge of boundary-making or cross-border cooperation, OR
• Has implemented a programme over the past year that has contributed substantively to boundary-making or cross-border cooperation.

The awardee will receive an award of £745, as well as a profile in the next edition of Borderlines.

IBRU is requesting nominating letters of no more than one page in length. They should briefly detail what the individual or organisation has contributed to boundary-making or cross-border cooperation, and how they meet the criteria noted above. Self-nominations are permitted.

Nominations should be sent to IBRU’s email address (ibru@durham.ac.uk) and must be received by 15 June 2018.