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## **Strategic Selection: Egypt's Choice of International Arbitration and American Mediation in the Taba Dispute (1982-1989)**

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## **Abstract**

**There is a shortage in the International Relations (IR) literature on the Egyptian-Israeli dispute over the Taba Strip in the 1980s. There is also a shortage the IR literature on the in-tandem use of various third-party conflict resolution methods simultaneously. The Taba case was a remarkable border dispute, because it was solved through a mix of international arbitration and American mediation (a mix which will be called “med-arb-med” in this paper). Using a variant of the Strategic Selection Theory, the theoretical tradition set by Wiegand and Beuck, this paper argues that Egypt has used this mix of international arbitration and American mediation for three strategic reasons: First, to counterbalance Israel’s policy of imposing facts on the ground through military presence and illegal construction of buildings. Second, because of the benefits of using arbitration in increasing the probability of regaining Taba from Israel, given Egypt’s strong legal case. Third, due to the benefits of accepting American mediation, in terms of Washington’s so-called “reward power” and its power to guarantee fair arbitral procedures and the implementation of the tribunal’s final ruling.**

**Key words: Taba, strategic selection, mediation, arbitration, “med-arb-med”, reward power.**



## **I - Introduction**

After decades of war, the peace treaty between Egypt and Israel was signed by Anwar Sadat and Menachem Begin in March 1979. According to the treaty, both countries would have peaceful, diplomatic relations, and Israel would withdraw from Sinai, which it occupied in the 1967 war. This meant that the Israelis would withdraw from any Egyptian land which was not part of Mandate Palestine before the establishment of the State of Israel in 1948. The Israelis completed the first stage of their withdrawal from Sinai in May 1979. The second (final) stage of the Israeli withdrawal from Sinai was completed on April 25, 1982. Before the completion of the final stage of withdrawal from Sinai, however, the Israelis refused to withdraw from one region: Taba, a small piece of land with an area of around one square kilometer, on the tip of the Gulf of Aqaba. Israel argued that there was no proof that Taba was an Egyptian land, and that Taba was actually a part of Mandate Palestine. This meant that, according to Israel, Taba should remain under Israeli sovereignty.

The Americans has been interfering in the Taba dispute as a third party since 1982, to help Egypt and Israel reach a solution. In 1986, Washington's mediation finally helped Cairo and Tel Aviv agree to use arbitration to solve the Taba dispute, side by side with American mediation which was still going on even during the arbitral process. The Taba tribunal eventually ruled in September 1988 that Taba belonged within the Egyptian borders. The Israelis, however, dragged their feet in implementing the ruling, and, after further negotiations with American mediation, the Israelis withdrew from Taba which was handed over to Egyptian sovereignty in March 1989.

Thus, the Taba dispute, which started in 1982 and ended in 1989, can be divided into three phases. The first phase of the Taba dispute (1982-1986) was the pre-arbitration phase, when there was no arbitration, and only American mediation was used. The second phase (1986-1988) was the arbitration phase by the international tribunal on Taba, even as American mediation was proceeding parallel to the arbitration process. The third phase (1988-1989) was the post-arbitration phase, when the

arbitration process ended after the tribunal issued its ruling in Egypt's favour, and American mediation continued in order to manage the post-arbitration phase.

The purpose of this paper is to examine the unique mix of mediation and arbitration used in the Taba dispute. The Taba arbitration case is unique because of the resort to this mix of arbitration and mediation, or "med-arb-med" as it will be called in this paper, for reasons which will be explained later. This unique mix, or overlapping, of international arbitration and American mediation, was accepted by Cairo even though, according to the Egyptians, Washington was biased towards Israel despite the Egyptian strong legal case. Despite this unique feature of the conflict, there is a dearth in academic work which discusses the Taba arbitration case from an International Relations (IR) theory perspective. This paper aims to investigate the factors which have led to Egypt's strategic choice of using US mediation alongside with international arbitration. There is also a dearth in academic work which tackles the cases which mix mediation and arbitration, and one of the aims of this paper is to help fill this gap.

To further analyze the Egyptian decision to use this mix of international arbitration and American mediation, this paper sets itself mainly in the Strategic Selection theoretical model suggested by Wiegand and Beuck (2020), which is a model designed to help understand the reasons behind states' choice of peaceful dispute resolution (PDR) methods. The Strategic Selection model is used in this paper to argue that the Egyptians have resorted to arbitration for two reasons. First, to counterbalance against Israel's strategic advantages, namely, the policy of imposing facts on the ground, given the Israeli policy of stalling before arbitration, and stalling even after the ruling was issued. Second, to increase Egypt's probability of regaining Taba, given the benefits of arbitration and the strong Egyptian legal claim vis-à-vis Israel.

*H<sub>1</sub>: Egypt has chosen arbitration to counterbalance against Israel's strategic advantages, namely, the imposition of facts on the ground by refusing to withdraw from Taba.*



*H<sub>2</sub>: Egypt has chosen arbitration to increase the probability of regaining Taba, given the strong Egyptian legal claim vis-à-vis Israel.*

Furthermore, based on the tradition used by Badran (1981, 1990), this paper argues that Cairo has accepted Washington's mediation in the Taba dispute (1982-1989), side by side with the arbitration process by the Taba tribunal, despite Cairo's perception of Washington as being biased towards Tel Aviv (despite Israel's weak legal case). This was because Cairo saw certain benefits in accepting the American mediation in the Taba dispute, namely; the Americans had the power to reward Egypt for being a responsible partner in peace ("reward power") and acted as a guarantor to ensure a fair arbitral process and Israeli compliance with the ruling of the tribunal.

*H<sub>3</sub>: Cairo has accepted Washington's mediation in the Taba dispute, despite Cairo's perception of Washington's bias towards Israel, because Cairo saw certain benefits in dealing with Washington.*

To test for these three hypotheses, this paper will tackle the following research questions:

*Research Question 1 (RQ<sub>1</sub>): How did Egypt's resort to arbitration improve Egypt's strategic stance vis-à-vis Israel?*

*Research Question 2 (RQ<sub>2</sub>): What benefits did Egypt see in US mediation?*

*Research Question 3 (RQ<sub>3</sub>): How did international arbitration and American mediation go side by side in the Taba case?*

This paper will test for the Strategic Selection Theory presented by Wiegand and Beuck (2020) by applying its definitional components to the case study, which is Egypt's use of international arbitration and American mediation in the Taba case. These three definitional components, according to Wiegand and Beuck (2020) are, first, counterbalancing against the opponent's strategic advantages, second,

taking advantage of the benefits of using international arbitration, and, third, increasing the probability of winning the case against the opponent, if the legal claim is strong vis-à-vis the opponent. For the purpose of this paper, a modified variant of the Strategic Selection Theory will be used, as the second and third components will be combined into one component, for the purpose of facilitating the analytical process. Furthermore, Washington's "reward power" will be added as a third component of the Strategic Selection Theory, for the purpose of analyzing the role of American mediation in the Taba arbitration case.

The issue tackled by this paper is important for two reasons, (to borrow a leaf from Bercovich and Jackson (2001)). The first reason is that "knowledge about conflict management requires an explanation of how disputants come to employ one conflict management technique over another." The second reason is that, in order to improve the effectiveness of conflict management techniques, it is important to know when the Peaceful Dispute Resolution (PDR) method used is likely to be accepted by both parties (Bercovich and Jackson 2001, p. 62). In the field of Conflict Resolution, the Strategic Selection Theory helps academics and policymakers better understand the motives behind the choices of disputant states, regarding which peaceful conflict resolution methods they would use. If one of the disputants has a policy of imposing facts on the ground (such as Israel in the Arab-Israeli conflict, or China in the South China Sea), then the second party can use legal arbitration to enhance its legal position vis-à-vis the first disputant who is imposing facts on the ground. If the ruling of the arbitration is in favor of the second party, then this ruling can, eventually, help the second party gain the support of the international community to force the imposing party to comply with the arbitration's ruling. Taba is a good example of such a situation, where one party (Israel) was imposing facts on the ground through military presence and the illegal construction of buildings. In this case, the second party (Egypt) was able to use arbitration and peaceful conflict resolution to apply legal/ethical/strategic pressure on Israel to withdraw from Taba. This eventually forced Israel, the imposing party, to comply with the tribunal's ruling.



This paper will not tackle the so-called “war of the maps” between Egypt and Israel during the arbitration proceeding, when each state was producing maps and documents in an attempt to prove the legality of its possession of Taba (Kemp and Ben-Eliezer, p. 333 and Rizk 1989, passim). The paper will also not go through the accusations of forgery and deception which both of Cairo and Tel Aviv threw at each other. (See, for example, Reisman and Skinner 2014, p. 127-162 and Rizk 1989, passim). Rather, this paper will focus on Cairo’s strategic choice to use international arbitration and American mediation to secure its sovereign rights and possession of Taba.

This paper will start with the literature review, which will include a theoretical presentation of the Strategic Selection Theory and a conceptual presentation of the mixing of mediation and arbitration. The literature review will also cover the past academic work on arbitration, and the past academic work on the Taba case. This is followed by a historical presentation of the Taba arbitration case, and an application of the Strategic Selection Theory.

## **II - Literature Review**

This literature review will cover the academic work on arbitration, the academic work on the “strategic selection” of arbitration which is the theoretical basis of this paper, the academic work on the mix of mediation and arbitration, and, finally, the few academic works on the Taba arbitration case within International Relations (IR) theory.

### **A- Arbitration as a Political Strategic Choice:**

Most of the literature on arbitration uses large-N quantitative analysis to provide a theoretical explanation to different patterns, causes and effects of using legally-binding settlements to international disputes. One notable example is the work of Allee and Huth (2006), where they test three different explanations for a state’s decision to pursue legal settlement of territorial disputes. The first explanation is the realist explanation based on strategic alliances between the disputants, the balance of power between them, and the strategic value of the disputed

territory. The second explanation is the “domestic cover” explanation, which focuses on the use of an international legal body to provide political cover for state leaders and their policies in front of the domestic public opinion, depending on the level of democracy in the conflicting states. The third explanation focuses on international law as a focal point for state actions, especially if non-legally binding alternatives have failed to reach a settlement or an agreement over the dispute. By examining 348 global territorial disputes between 1919 and 1995, Allee and Huth conclude that the “domestic political cover” explanation has the strongest evidence to support it, while the “international law as a focal point” explanation has the least evidence to support it.

Wiegand's work (2011, 2014 and 2020) focuses on the reasons behind states' choice of arbitration or any other type of peaceful conflict resolution method. She is promoting what she calls a “strategic selection” or a “strategic choice” theory, where she argues that states choose to resort to arbitration (or any other conflict resolution method) based on certain strategic factors which, the state thinks, would lead to more benefit to the state's national interest.

Powell and Wiegand (2014), for example, argue that the choice, by states, of whether to solve territorial disputes using legally-binding methods, or not, is a “strategic rational decision”. Using a large-N quantitative analysis of hundreds of attempts of peaceful dispute resolution, Powell and Wiegand (2014) argue that the “strategic choice” by a state as to whether or not to use arbitration is dependent on two variables; the past experiences of the state with past uses of arbitration, and respect for the rule of law in the state. Their results show two points. First, that states which have positive experiences with the use of arbitration (i.e. a favorable ruling) are more likely to resort to arbitration again in future disputes. Second, that states having a higher rule of law are less likely to resort to arbitration than those with a low rule of law. This is because the ruler of a state with a high rule of law (a democracy) fears that an unfavorable ruling in the arbitration process can be seen by the voters as a failure, and he might be voted out in the next elections. On the other hand, argue Powell and Wiegand, the ruler





of a state with low rule of law (a dictatorship) would not care as much about public opinion or about losing an election.

Similarly, Wiegand and Powell (2011) argue that, in solving territorial disputes, states become engaged in a “strategic quest” to find the peaceful dispute resolution (PDR) forum which would best suit their own national interests, so, again, the “choice” of the PDR method is “strategic”. Such PDR forums include mediation, arbitration, or bilateral negotiations. Using a quantitative analysis of all territorial disputes from 1945 until 2003, with data from the Correlates of War, they argue that the state’s past experience with each PDR forum determines whether the state would resort to this PDR forum again in a future dispute or not. This is most evident, they add, in legally-binding PDR tools such as arbitration.

One notable example of an N=1 literary work on arbitration was that of Wiegand and Beuck (2020). Taking the Filipino decision in 2013 to use arbitration in the Philippines’ maritime dispute against China over the Scarborough Shoal as the main case study of their paper, Wiegand and Beuck (2020) argue that “the choice of arbitration by the Philippines was a strategic selection because of the benefits of arbitration that were more favorable to the Philippines than other dispute resolution methods.” They theorize that there are three factors that “would influence states’ strategic selection of dispute resolution methods.” These three factors are, first, counterbalancing against the opponent’s strategic advantages, second, taking advantage of the benefits of using international arbitration, and, third, increasing the probability of winning the case against the opponent, if the legal claim is strong vis-à-vis the opponent. To test their theory, they use process tracing and interviews with Filipino officials to track the causes behind Manila’s movements, and the findings do support the “strategic selection” theory. The work of Wiegand and Beuck on “strategic selection” is the theoretical basis of this paper, as applied on the Taba dispute.

Similarly, Salacuse (2022) laments that arbitration and its strategic importance is not given enough attention in the field of International

**Relations. He argues that arbitration has great strategic importance in ending disputes and in giving other tools of diplomacy and conflict resolution “a needed helping hand.” In several cases, including the Taba case, arbitration was used in tandem with other tools of conflict resolution to solve interstate disputes (Salacuse 2022, passim). Indeed, Abraham Sofaer, the legal advisor to the US Department of State from 1985 to 1990, and the chief American negotiator during the Taba arbitration case, said that, in the case of Taba, arbitration was “only one part of the substantial effort that enabled diplomacy to prevail.” (Sofaer 2017, p. 266).**

**Salacuse (2022) also discusses the issue of “ripeness”, and suggests a “theoretical framework” consisting of several conditions which should “help negotiators determine when an interstate conflict is ripe for arbitration.” These conditions include the failure of other diplomatic options and a long period of failed negotiations. They also include the strategic significance of the issue arbitrated over, as the conflicting states would not agree to resort to arbitration over highly significant strategic issues which would affect their national security or their very existence. Another condition is the government’s need to protect itself from domestic public criticism, by allowing it to avoid responsibility for any concessions which may happen after the arbitrator’s ruling. Conditions also include, among other things, the government’s perception of its own legal case, the government’s “cost/benefit analysis of engaging in interstate arbitration”, and support from third parties. Salacuse applied these conditions to cases such as the Taba dispute, the dispute over Brčko during the Dayton negotiations in Bosnia, and others (Salacuse 2022, p. 181, 192-196).**

**While the works of Wiegand and Beuck (2020) and Salacuse (2022) focus only on motivations for arbitration, Badran (1981) focuses on the motivation behind state resort to mediation and the consequences of state action. Using US mediation between Egypt and Israel between 1967 and 1978 as a case study, Badran (1981) focuses on the role of mediators as third parties in disputes, including the motives of mediators, and why the belligerents accept the role of the mediators to reach a peaceful**



settlement, in addition to the consequences of third party intervention. She presents eleven different hypotheses on the relation between the United States, as a mediator, and the two belligerents, Egypt and Israel. Only one of the eleven hypotheses presented by Badran (1981) will be used in this paper, namely; Badran's third hypothesis, or Badran's H<sub>3</sub>, which argues that Egypt has accepted American mediation in the Egyptian-Israeli conflict, despite Cairo's perception of Washington as biased to Tel Aviv. According to Badran, Cairo accepted Washington's mediation during the Egyptian-Israeli conflict in the period from 1967 until 1978, due to Washington's ability to reward the unfavoured party (the "reward power"). Cairo had the perception that Washington can reward Egypt, the unfavoured party, with American military and economic assistance, in return for offering compromises as advised by the American mediator, and conceding to the American interests (Badran 1981, p. 18, 26-27, 37-38, 43, 198, 240, 241, 244, 252).

Based on Badran's aforementioned hypothesis, and on Badran's work on Taba (Badran 1990) which will be discussed in more detail later, this paper argues that Cairo has accepted Washington's mediation in the Taba dispute (1982 – 1989), despite Cairo's perception of Washington as being biased towards Tel Aviv, due to certain benefits which Cairo saw in accepting the American role/mediation in the Taba dispute, and Washington's "reward power".

The next section will focus on the literature on mixes of mediation and arbitration.

### **B – Meditration: A mix of arbitration and mediation:**

In recent years, academic literature started to give more attention to the use of a mix of mediation and arbitration in conflict resolution. This mix may be called "meditration", or "arb-med", or "med-arb", as different authors give it different names in the literature.

Third party involvement in (bilateral) interstate conflicts usually includes mediation or arbitration. Mediation is where a third party, the

mediator, acts as a facilitator between both conflicting parties to help them reach a settlement. The mediator's role usually involves giving advice and suggestions to the conflicting parties, and, if the mediator is too powerful, the mediator can manipulate the conflicting parties into reaching a solution which would be in the strategic interest of the mediator. Examples include American President Jimmy Carter's mediation between Egyptian President Mohamed Anwar el Sadat and Israeli Prime Minister Menachem Begin during the Camp David talks in 1978 which eventually led to the Peace Treaty of 1979. A mediator's suggestions and recommendations, however, are not legally binding to the conflicting parties.

Arbitration, on the other hand, is where a third party, an international court of law, is asked to interfere between the conflicting parties to issue a legally-binding ruling which all conflicting parties have to abide by, under international law.

In recent years, however, a third type of third-party involvement has been introduced, which is a mix of mediation and arbitration. This mix of mediation and arbitration has been given many names; "meditation" or "arb-med" or "med-arb" or "meditated arbitration" or "arbitrated mediation."

Ker-Lindsay (2009a) defines "meditated arbitration" or "arbitrated mediation" or "meditation" or "med-arb" as "a 'hybrid' approach that lies between mediation and arbitration", where a third party mediates between the conflicting parties to facilitate reaching an agreement, and fails, until it becomes "clear that the parties cannot reach an agreement, at which point the mediator 'switches hats' and takes on the role of arbitration and imposes a solution on the parties." (Ker-Lindsay 2009a, p. 225). This is a limited definition because it restricts this technique to only one third party who "switches hats" from mediation to arbitration.

I offer a different definition to the mix of meditation and arbitration. My definition is different because it does not necessitate the same third party "switching hats". Rather, my definition is more flexible, in the



tradition of Deason (2013) and Nigmatullina (2016) where the mix of mediation and arbitration is the tool used by the several different third party actors involved in the conflict. Similarly, my argument takes the mix of mediation and arbitration to a different level, where two different third parties can be involved, where one is practicing mediation and the other is practicing arbitration, both at the same time, and both have the consent of the conflicting parties.

The literature on mixing mediation and arbitration in legal studies is ample. Deason (2013) says that methods which combine mediation and arbitration are not new, and they are gaining popularity in courts in the United States and in the legal courts of some Asian countries. These methods come in various forms, including mediation followed by arbitration (“med-arb”), arbitration followed by mediation (“arb-med”), or arbitration with the possibility of a break in the proceedings for mediation (“mediation window”). These processes can be conducted by the same neutral party, or can be conducted by different neutral parties (Deason 2013, p. 219). Her work offers a legal review of the legal features, advantages and disadvantages of each combination. Nigmatullina (2016) follows a similar line, and says that the mix of mediation and arbitration can be called “mediation-arbitration” or “arbitration-mediation” or “arbitration-mediation-arbitration.” She adds that the most commonly used term in the literature to indicate the mixed use of mediation and arbitration is the term “med-arb”, and that most authors would agree that it means mediation followed by arbitration (Nigmatullina 2016, p. 20). Nevertheless, the works of Deason and Nigmatullina fit in the legal literature, and do not discuss interstate conflict like this paper intends to. For the purpose of the Taba dispute, this paper will use the term “med-arb-med”, for reasons which will be explained shortly.

The literature on the mixed use of mediation and arbitration in interstate conflict is scant, and most of the literature on this mix is applied to management and business disputes. Ker-Lindsay (2009a) offers one of the rare works of this mix in interstate conflict. He offers his above definition of “meditation” (one party “switching hats”) and

gives examples from the case of Cyprus, and the case of Kosovo. In the case of Cyprus (2002-2003), he argues, former UN Secretary General Kofi Annan was acting as a mediator between Greece and Turkey over the Cyprus dispute. He offered the so-called Annan Plan to solve the conflict. When he found that both parties will never agree, he “was eventually left with no choice but to fill in the parts of the plan where no consensus had been reached between the two sides” (Ker-Lindsay 2009a, p. 227).

Another example of “meditation” presented by Ker-Lindsay is the work of Martti Ahtisaari, the former President of Finland, who was appointed in 2005 by UN Secretary General Kofi Annan as UN Envoy for Kosovo, to act as a mediator between Belgrade and Pristina over the future of the Province of Kosovo. Kosovo is a Muslim-majority province of Serbia which was seeking independence from Belgrade. When Ahtissari found that Belgrade and Kosovo would not agree, he based his proposals on Kosovar independence, which Belgrade opposes. Therefore, “on 17 February 2008, Kosovo unilaterally declared independence, basing its new constitution on the Ahtisaari proposals.” (Ker-Lindsay 2009a, p. 228-229).

In both of Cyprus and Kosovo, the United Nations, as a mediator, ended up imposing its own solution on both conflicting parties. Thus, argues Ker-Lindsay, “meditation” represents a “blurring” of the line between mediation and arbitration, with an “added element of compulsion”. As the UN goes beyond its mediating role, it uses “meditation” to “end the condition of deadlock between conflicting parties.” However, this tool has “undermined” the peace process in Cyprus and Kosovo by “delegitimizing it in the eyes of one or both parties”, because it is “undemocratic”, “at odds with the principle of sovereignty”, and, therefore, “it lacks legitimacy” (Ker-Lindsay 2009a, p. 231-232). He stresses, however, that it was not the case, in both of Cyprus and Kosovo, that UN “mediation” has turned into UN “arbitration”. If it was, he argues, then we would have seen the traditional elements of arbitration, such as the consent of both parties, since one of the conditions of arbitration is that both parties have to agree to resort to an arbitrator.



Instead, what we saw in Cyprus and Kosovo was that the UN imposed its will on both sides without the consent of both sovereign parties (Ker-Lindsay 2009b, p. 251).

For the purpose of this paper, the tradition of Ker-Lindsay where one party “switches hats” will not be used. Instead, this paper will use the more flexible tradition of Deason (2013) and Nigmatullina (2016), where different peaceful dispute resolution (PDR) tools can simultaneously be used by different third parties. In the case of Taba, the United States does the mediation, and the Taba tribunal does the arbitration.

This paper will use the term “med-arb-med”, named after the three phases of the Taba dispute. The first phase of the Taba dispute (1982-1986) was the pre-arbitration phase, when there was no arbitration, and only American mediation was used, thus the term “med.” The second phase (1986-1988) was the arbitration phase, thus the term “arb”, even as American mediation was proceeding parallel to the arbitration process. The third phase (1988-1989) was the post-arbitration phase, when the arbitration process ended after the tribunal issued its ruling in Egypt’s favour, and American mediation continued in order to manage the post-arbitration phase, thus the term “med”. Putting the three terms together, in the order of the phases, the term used in this paper to describe the mix of mediation and arbitration in the Taba dispute becomes “med-arb-med”.

The next section tackles the literature on the Taba dispute.

### C – Taba in Academic Work:

Regarding the Taba case in particular, there is a dearth in the international academic literature which focuses on the Taba arbitration case in terms of International Relations (IR) theory. One notable exception is the work of Kemp and Ben-Eliezer (2000) where they use constructivism to treat sovereignty as a social construct, on the domestic, regional and international level, to explain how Taba, the small, “unimportant” piece of land, became a “sticking point” and a “paramount test” over whether Egyptian-Israeli peace would prevail or

collapse. They also tackle how each of Egypt and Israel used different conceptions, or definitions, of “sovereignty”, to argue that Taba belonged within its borders.

Salacuse (2022) has frequently mentioned Taba as an example to his hypotheses on “ripeness”, but Taba was only one of several cases which he has frequently used to support his argument.

Moawwad (1990) tackles US mediation in the pre–arbitration phase of the Taba dispute (1982-1986), where she argues that Israel’s eventual acceptance to resort to arbitration to solve the dispute had two reasons. The first reason was Israeli domestic party politics and the competition between the Labour Party and the Likud Party in Tel Aviv. The second reason was Washington’s good offices which sought to help Cairo and Tel Aviv reach an agreement over how to handle the Taba conflict.

Badran (1990) tackles US mediation during the arbitration phase (December 1986 – September 1988). She argues that Egypt’s acceptance of American mediation during this phase supports the literature on the unfavoured party’s acceptance of the mediation of a biased third party due to the mediator’s “reward power” (Badran 1990, p. 148). She also compares the traditional functions of the mediator to the American mediation during the arbitration period. She argues that Washington’s strongest function as a mediator during this period was its role as a guarantor that each party would commit to a fair arbitration process, and to the implementation of its final ruling. Washington had two other functions as a mediator during this period, which were to facilitate communication between both parties, and to offer suggestions. However, these two functions were weak in this case, since Cairo and Tel Aviv already had clear, direct communication since Sadat’s visit to Jerusalem in 1977, and since the American suggestions during the Taba dispute were mostly rejected by one, or both, parties (Badran 1990, p. 149-157).

Based on the academic tradition which says that third parties should interfere to guarantee the parties’ commitment and implementation of





an arbitration's ruling, El-Rasheedy (1990) focuses on the function of Washington's mediation as a guarantor of the fairness of the arbitration process and the post-arbitration, or implementation, phase. American mediation has presented suggestions to help both parties reach a middle ground, although most of these American suggestions were rejected. Washington has also pressed Israel to implement the Taba ruling in 1989 (El-Rasheedy 1990).

The next section offers a historical presentation of the main events of the Taba dispute, and compares the events to the hypotheses in order to test for this paper's version of the Strategic Selection Theory.

### **III - Historical Background: The Taba Arbitration Case and Egypt's Strategic Choices:**

As stated earlier, the Taba conflict is divided into three phases; the pre-arbitration phase, the arbitration phase, and the post-arbitration phase.

The conflict over Taba started before the second (final) stage of the Israeli withdrawal from Sinai in 1982, when the Israelis argued that Taba was a part of Mandate Palestine, and not an Egyptian territory, and therefore Israel should keep it.

There were geopolitical, strategic and economic reasons why Israel did not want to give up Taba. First, Israel had many ports on the Mediterranean Sea, but it had only one port on the Red Sea, which is Eilat. Eilat is a narrow port, only four kilometers wide, which did not give Israel as much access to the Red Sea as it wanted. If Israel had Taba as well, whose shore on the Red Sea was one kilometer long, then it would widen Israel's shore on the Red Sea by about 25% more (Moawwad 1990, p. 106-108 and Rizk 1989, p. 17).

Second, the Red Sea water in Taba would be a good tourist attraction (especially that Israel built the Sonesta Taba Hotel during the occupation of Sinai, where construction on the hotel started in 1981 and it was formally opened in November 1982). The Red Sea water in Eilat,

on the other hand, was full of corals, so it was not very good for swimming and tourism, and not as good for shipping as Taba was (El-Rasheedy 1990, p. 294 and Rizk 1989, p. 18).

Another reason why Israel wanted to keep Taba was that the Israelis did not want a precedent where an Arab country got back all of its lands from Israel. In other words, if Israel gave Egypt back all of its lands, then it might be committed to do the same with other Arab countries which negotiate with Tel Aviv. This will be discussed later in more detail.

With the rise of the Taba dispute, Cairo and Tel Aviv had to agree on a mechanism to solve the conflict. The text of the Egyptian-Israeli Peace Treaty offered solutions, as the seventh article (Article VII) of the treaty says that disputes over the Treaty should be solved through conciliation or arbitration:

- 1. Disputes arising out of the application or interpretation of this Treaty shall be resolved by negotiations.*
- 2. Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration. ("The Egyptian-Israeli Peace Treaty").*

The Egyptians called for solving this border dispute by arbitration, as per the Peace Treaty. Initially, Tel Aviv rejected arbitration, and, instead, called for solving it by conciliation to reach a middle-solution which would allow Israel to maintain a presence in Taba. According to the Egyptians, the Israelis knew that, legally speaking, their case in arbitration would be weak, so they depended on wasting time, hoping that the Egyptians would give up and reach a middle solution that would allow Israeli to maintain a presence in Taba. Indeed, the political right in Israel, as presented by the Likud Party, wanted to delay any solution on Taba indefinitely. Moreover, Yitzhak Shamir, Israel's Prime Minister from 1983 to 1984, and from 1986 until 1992, wanted a "political stalemate" throughout the negotiations over Taba in order to "perpetuate Israel's sovereignty on the ground". Throughout the dispute, however, Cairo kept emphasizing that it was against any middle



solution which would not grant full sovereignty of Taba to Egypt, and that it wanted arbitration as per Article VII of the Peace Treaty (El Araby 2011, p. 157, 180, 181, Kemp and Ben-Eliezer 2000, p. 324, 327 and Rizk, 1989, p. 92, 100, 101).

However, the rightwing Likud Party was not alone in power in Israel at the time. Following the Parliamentary elections in Israel in 1984, each of the two main political parties, the rightwing Likud Party and the leftist Labour Party, failed to reach a majority in the Knesset which would allow it to form a government. Eventually, both parties agreed to form a coalition government based on a rotation government arrangement. According to the rotation deal between both parties at the time, Labour's Shimon Peres would be Prime Minister from September 1984 until October 1986, and Likud's Yitzhak Shamir would be Prime Minister from October 1986 until December 1988. Shamir would go on to win the elections of 1988, and remain as Prime Minister from 1988 until 1992. This rotation deal, and the continuous competition between Likud and Labour, had its impact on the Taba dispute. The rightwing politicians, headed by the Likud Party, saw that giving up Taba would have a domino's effect which can, potentially, lead Israel to give up the West Bank eventually. Indeed, Ariel Sharon, the Israeli Minister of Industry and Infrastructure at the time, said that any Israeli concession over Taba would be a precedent which would lead to further Israeli concessions in the West Bank. The leftists, led by the Labour Party, supported arbitration and saw that reaching a solution with Egypt, based on cooperation and joint management of tourism in Taba, would be more constructive than Likud's zero-sum mentality, and that it was better to give up Taba in order to maintain the peace relations with Egypt, than to give up peaceful relations with Egypt in order to keep Taba. Such leftist arguments went against an old Zionist principle, which said that possession of territory had priority over peace (Kemp and Ben-Eliezer 2000, p. 326, 327 and Moawwad 1990, p. 97-102).

On January 8, 1986, the Labour Party, headed by Prime Minister Shimon Peres, threatened to dissolve the coalition government in Israel if the Taba dispute was not solved. Finally, on January 13, 1986, a joint

statement between the Labour Party and the Likud Party was issued, stating that Israel agreed to resort to arbitration. Peres made a statement to reporters that arbitration over Taba would “enhance relations between Israel and Egypt, it will make peace stronger, more promising and more stable.” (Claiborne 1986, Lewis 1986 and Moawwad 1990, p. 99-100).

Therefore, the Egyptians and the Israelis started negotiating over forming a special tribunal to rule over the Taba arbitration case. They spent nine months negotiating over the compromis; the agreement, or document, which governed how the arbitration process would proceed. The compromis was finally signed at the Mina House Hotel in Giza in September 1986. In forming the arbitration's judicial committee, five judges were chosen by the negotiating parties; an Israeli, an Egyptian, in addition to three neutral judges: a French, a Swede and a Swiss as will be shown later (El Araby 2011, 153, 198-201).

This was the pre-arbitration phase of the conflict, where only American mediation was active and there was no arbitration yet. The next section will proceed with the historical narrative, with focus on the arbitration phase and the post-arbitration phase, and with focus on Egypt's strategic choice to use international arbitration alongside American mediation. The next section will also test the events against the components of the Strategic Selection Theory as presented by Wiegand and Beuck (2020), and as modified for the purpose of this paper as previously explained.

**Strategic Selection Component 1: Counterbalancing Israel's strategic advantage:**

Israel had the strategic advantage in the Taba dispute since it was the invading power who had the ability to impose facts on the ground and waste time in order to preserve the status quo.

During the Taba dispute, Israel built the Sonesta Hotel and the Rafi Nelson Resort in Taba as a policy of imposing facts on the ground. Eli



Paposhadu, the Israeli businessman who built the Sonesta Hotel in Taba during the Israeli occupation, said “When we built the hotel, we knew that it was not Israeli territory, but who cared?!” This was an Israeli tactic to “build facts on the ground” and perpetuate Israel’s sovereignty over Taba, based on the Zionist link between territorial sovereignty and building construction, which was the original driving force to build the resort site at Taba (Kemp and Ben-Eliezer 2000, p. 321, 322, 337).

In late September 1988, the tribunal ruled that Taba was Egyptian. (Four judges agreed to this ruling, and only one, the Israeli judge, opposed it). Nevertheless, Israel still refused to withdraw from Taba. The tribunal’s ruling did not stop Tel Aviv from continuing its “facts on the ground” policy (Kemp and Ben-Eliezer 2000, p. 336).

During the next few months, the Israelis tried to impose certain conditions on Egypt (like special rights for the Israelis who enter Taba) and said that they would not withdraw unless these conditions were met. The Israelis and the Egyptians negotiated over these conditions, but no agreement was reached. However, Cairo’s insistence on implementing the ruling of the arbitration, in addition to American pressure on Tel Aviv, helped change the Israeli position, since Israel was not willing to risk its good strategic relations with Egypt just to keep Taba. Thus, in March 1989, the Israelis withdrew from Taba, therefore ending the Israeli presence in Sinai. Moreover, after further negotiations over the Sonesta Taba Hotel, the Egyptians paid the Israelis \$37 million for the hotel and agreed to appoint a joint Egyptian-American management of the hotel (El Araby 2011, p. 223 - 233).

Indeed, even countries who depend on their military power, and their imposition of facts on the ground, fear the diplomatic and legal power of arbitration if it rules against their favour. Israel was no exception. After the Taba tribunal’s ruling against Israel, Prime Minister Yitzhak Shamir said that it has been proven that international arbitration would always harm Israel’s interests (Abdul Hai 1991, p. 198). Similarly, Roni Milo, a senior aide of Shamir, said that “the lesson of Taba is that international forums or councils are dangerous forums for Israel”

(Brinkley 1991). This stance is similar to that of China when it rejected the arbitration case which the Philippines submitted to a special tribunal under the United Nations Convention on the Law of the Seas (UNCLOS) over the Scarborough Shoal (Wiegand and Beuck 2020). Arbitration, despite lacking military enforcement mechanisms, does scare countries which breach international law. So powerful was the diplomatic power of arbitration, that Israel had to rule out taking any action against Cairo, including not implementing the Taba arbitration's ruling, in reaction to Cairo's recognition of the so-called Palestinian State which was announced by Yasser Arafat in the Algerian Parliament in November 1988 ("Israel Bars Action Against Egypt" 1988).

In terms of strategic selection, the arbitration process was a strategic choice by Egypt, and its ruling in Egypt's favour in September 1988 has helped Cairo face Israel's strategic "facts on the ground" policy. Egypt won this strategic battle.

### **Strategic Selection Component 2: The Benefits of Arbitration for Cairo and Egypt's High Probability of Winning**

Arbitration is a legal process, where an internationally recognized court issues a legally-binding ruling, which is also recognized by the international community. Refusal to implement this ruling would be seen as an act condemned by international law.

Strategically speaking, Egypt's strong legal case and Cairo's high probability of winning an arbitration made Cairo see the benefits of arbitration over conciliation as per Article VII of the Egyptian-Israeli Peace Treaty. Conciliation might have entailed a division of Taba, or the leasing of Taba for 99 years, as Israel requested (El-Araby 2011, p. 159-160). Arbitration, on the other hand, coupled with Egypt's strong legal position, strengthened Cairo's strategic position and helped Egypt regain Taba.



Another benefit of arbitration was that the state has the legal right to choose the panel of judges, or arbiters, of the tribunal. Both of Egypt and Israel preferred to use arbitration and establish a special Tribunal for the Taba dispute, rather than use adjudication through the International Court of Justice (ICJ). In both of arbitration and adjudication, the disputing parties resort to a third party, a court, to issue a legal ruling which is legally binding for both disputant states. Nevertheless, arbitration and adjudication are still two different kinds of legally-binding peaceful dispute resolution tools. In adjudication, the disputants resort to a permanent court with permanent judges, such as the International Court of Justice (ICJ) which is a permanent court affiliated to the United Nations. In arbitration, on the other hand, the disputants establish an ad-hoc special tribunal which is designed specifically for the purpose of the specific dispute in hand, and can be dissolved after the dispute is over. Arbitration, therefore, offers an advantage for the disputants in that each state can choose the judges, or arbiters, of the tribunal, and both disputant states have to agree on these chosen judges (Bercovich and Jackson 2009, p. 47-59 and Wiegand and Beuck 2020, p. 147-149, and). This was one of the reasons why both of Cairo and Tel Aviv did not prefer to resort to the ICJ (Abdul Hai 1991, p. 130-131 and Moawwad 1990, p. 105). Tel Aviv had an additional reason for not resorting to the ICJ, which is that it does not prefer a United Nations body to be involved (El Arabi 2011, p. 187).

Cairo has strategically used this advantage, which arbitration offers, to its benefit. If the Taba dispute was presented to the ICJ, then the Egyptians would have had to deal with the ICJ judges. But, in the case of the Taba Tribunal, which was established in agreement with Tel Aviv, the Egyptians can suggest the international judges which they know and trust (Abdul Hai 1991, p. 130-131).

In cases of arbitration, usually what happens is that both disputant countries agree on three judges, or arbiters; one from each disputant country, plus one neutral judge from a third country. However, the Egyptians suggested that, instead of only three judges, five judges would be appointed to the Taba Tribunal. The Egyptians were confident of

their strong legal position, and they saw that five judges, instead of three, would reduce the probability of error and the probability of Israeli pressure or bribery on the arbiters (“Taba” 2021). The Egyptians were therefore checking the backgrounds of the suggested judges, or arbiters, to make sure that they are efficient, trustworthy, neutral, and are enjoying a good financial standard of living to resist Israeli bribery (“Maakom Mona el Shazly” 2014). The Egyptians suggested lots of arbiters, and the Israelis rejected them. The Israelis, too, suggested lots of arbiters, and the Egyptians rejected them. Richard Murphy, US Assistant Secretary of State for Near Eastern Affairs, offered a list of 30 suggested arbiters, from which both sides would choose. Eventually, Cairo and Israel agreed on the five arbiters. The Egyptian judge, chosen by Cairo, was Hamed Sultan who taught international law at Cairo University. The Israeli judge, chosen by Tel Aviv, was Roth Lapidot who taught international law at the Hebrew University in Jerusalem. The three other judges (the neutral judges) upon which Cairo and Tel Aviv finally agreed were Pierre Bellet of France, Dietrich Schindler of Switzerland, and finally Gunnar Lagergren of Sweden who would be President of the Taba Tribunal. These three men were well-known experts in the field of international arbitration. The names of these five judges were included in the compromis of the arbitration (“Around the World” 1986, El Araby 2011, p. 200, 201, 378, 379 and Rizk 1989, p. 104).

Before moving on to the other aspects of Egypt's strategic choice of PDR method in the Taba dispute, it is worth mentioning that Egypt was able to use its geopolitical, regional weight to press Israel into accepting the three neutral international judges/arbiters which Egypt wanted. In the weeks before the signing of the arbitration's compromis in September 1986, Israeli Prime Minister Shimon Peres was looking forward to a summit meeting with Egyptian President Hosni Mubarak in Alexandria, followed by a summit meeting with Reagan in Washington. Peres was looking forward to the meeting with Mubarak, since it would have been the first summit meeting between Egypt and Israel since the Israeli invasion of Lebanon in 1982. The summit meeting with Mubarak was also one month before Peres was scheduled to relinquish the post of





Prime Minister to Likud's Yitzhak Shamir in October 1986, as part of the rotation deal under which the rotation government in Israel was formed at the time. Furthermore, Cairo announced that the Egyptian ambassador to Tel Aviv, who was withdrawn in 1982 as a result of the Israeli invasion of Lebanon, will not return to Tel Aviv until the Taba arbitration compromis was signed. The Israelis were not willing to accept Lagergren, Bellet and Schindler as the three neutral, international arbiters. As a result, Mubarak sent a message to Peres, through Richard Murphy, who was mediating the negotiations over the drafting of the arbitration's compromis, that there will be no summit meeting with Peres before the signing of the arbitration compromis. Richard Murphy asked Mubarak to delay the disagreements over the compromis to the summit meeting, but Mubarak insisted on his stance. As a result, the Israelis agreed to have Bellet and Schindler as the neutral arbiters, and it was agreed that the President of the Taba Tribunal would be chosen at a later date. The compromis was signed in the early morning of September 11, 1986, a few hours before the Alexandria summit between Mubarak and Peres. On September 29, the Egyptians and the Israelis agreed to have Lagergren as President of the Tribunal (Abdul Hai 1991, p. 10-11, 125 and 142-144, Baligh 1986, Fisher 1986, Lewis 1986 and "Peres' Losses" 1986).

The ability to choose the judges was an option offered by arbitration, which Egypt has used to its strategic advantage. Indeed, the three neutral, renowned judges eventually issued a legal ruling in Egypt's favour.

### **Strategic Selection Component 3: American Mediation, "Reward Power" and its Benefits for Egypt:**

Egypt accepted Washington's mediation before, during and after the arbitration process. This was because Washington, as the mediator, had "reward power". This reward power consisted of two points. First of all, America's strategic motive throughout the Taba dispute was to

maintain the good relations between Cairo and Tel Aviv (El Araby 1990, p. 334). In addition, Cairo saw no contradiction between the ongoing arbitration case and American mediation, proceeding in parallel with each other. This was especially true, since the acceptance of American mediation would display Cairo's commitment to reaching a peaceful resolution and exploring all possible ways of reaching it without affecting the ongoing arbitration process. Furthermore, the American involvement can help organize the situation in Taba after the tribunal's ruling is issued, like matters of tourism in Taba, for example. The Egyptians also thought that the American presence would decrease the influence of any anti-Egyptian extremist currents in the Israeli political coalition (Badran 1990, p. 147-148). Furthermore, Washington acted as a guarantor of implementing the Taba tribunal's rulings, as the Americans have affirmed to Egyptian and Israeli officials that Tel Aviv had to comply with the tribunal's decision in order not to risk the peaceful relations between Egypt and Israel (Badran 1990, p. 153-156).

The American mediation during the Taba dispute can be divided into the three phases of the Taba dispute; American mediation before the arbitration process, American mediation during the arbitration process, and American mediation after the issuing of the arbitrational ruling.

#### American Mediation Before the arbitration process (1982-1986):

During the first four years of the Taba dispute, the Egyptians and the Israelis were negotiating over how to solve the Taba conflict as per Article VII of the Peace Treaty. The Egyptians insisted on arbitration, while the Israelis opted for conciliation. During the pre-arbitration phase of the conflict, the Americans mediated (or used their "good offices" as Moawwad 1990 argued) to try to help both parties reach a solution. During this phase, the Americans helped Egypt and Israel reach an agreement to withdraw all armed forces from Taba and deploy Multi-National Forces in Taba until the dispute is solved. The negotiations were taking place over the size and functions of the Multi-National Forces. In the end, the agreement collapsed and was not fulfilled (Moawwad 1990, p. 82, 90, 113-117). These American-Egyptian-



Israeli negotiations came to a halt from March 1983 to January 1985, due to the deterioration of Egyptian-Israeli relations during the Israeli invasion of Lebanon, and because the Regan Administration in Washington was busy with Ronald Reagan's re-election campaign in 1984 (Moawwad 1990, p. 91).

Despite these difficulties, it could be argued that the presence of American mediations came to Egypt's strategic advantage at times, despite Cairo's perception of Washington as biased towards Israel. Indeed, there were American pressures on Israel to accept arbitration in order to find a settlement to the dispute. Throughout the four years of American-mediated talks from 1982 to 1986, the disagreement between Cairo and Tel Aviv was about whether the parties should resort to conciliation or to arbitration. The Israeli government was arguing that both conflicting parties were "not yet ripe" for arbitration, and, therefore, should first try the first option in Article VII of the Peace Treaty, which was conciliation. Nevertheless, during the pre-arbitration phase, there were American officials who tried to convince the Israelis that conciliation would be a waste of time for both disputant states. Conciliation, pointed out these American officials, is non-binding, and, therefore, neither side would be willing to offer concessions based on conciliation. However, such warnings were of no avail (Kemp and Ben-Eliezer 2000, p. 323-4).

Furthermore, El Araby said that the fairness of the American mediation depended on the American official in charge of the American delegation. When Richard Murphy, US Assistant Secretary of State for Near Eastern Affairs from 1983 until 1989, was in charge of the American delegation, the American delegation would be "very fair", according to El Araby. But when Abraham Sofaer was in charge, said El Araby, the situation would become "catastrophic" to the extent that El Araby had many shouting matches with Sofaer, due to Sofaer's perceived bias to Israel, especially that Sofaer was of Iraqi Jewish origins ("Maakom Mona el Shazly" 2014). Indeed, Sofaer has described El Araby as "one of the toughest negotiators I have ever worked with" ("Taba" 2021).

In January 1986, Tel Aviv accepted arbitration due to the domestic political scene in Israel, and from January to September 1986, the United States was mediating between Egypt and Israel over the wording of the compromis of the arbitration (Kemp and Ben-Eliezer 2000, p. 329-330).

**American Mediation During the Arbitration Process (1986-1988):**

Even as the arbitration process was taking place and the Taba case was presented to the Taba tribunal, American mediation was active in 1987 and 1988 (Badran 1990, *passim* and Kemp and Ben-Eliezer 2000, *passim*). Washington was trying to reach a middle solution between Egypt and Israel, even after Israel accepted arbitration, and even as the arbitral process was proceeding, in an American attempt to reach an “out-of-court settlement”. For example, in the spring of 1987, the Americans suggested joint Egyptian-Israeli sovereignty over Taba. When this suggestion failed, the Americans suggested full Egyptian sovereignty over Taba, with certain privileges for the Israelis to enter Taba and manage their economic and tourist businesses. The suggestions also included not allowing the Egyptian police force to enter Taba in order not to hinder tourism, not taking any Israeli who breaches the law in Taba to an Egyptian court, and, instead, sending him to an Israeli court and judged according to Israeli law. The Egyptians rejected these American suggestions (Abdul Hai 1991, p. 175-177, Badran 1990, p. 156-157, 160, El-Rasheedy 1990, p. 297, and Rizk 1989, p. 10-11 and *passim*).

Cairo agreed to use Washington's mediation during the arbitration phase because, as said earlier, it wanted to show Washington that it was a responsible partner in peace who was willing to explore all of the possible options to solve the conflict. Even with the Egyptian perception that the United States was biased towards Israel (See El Araby 2011, *passim* and Rizk 1989 *passim*), Cairo did not want to lose Washington's “reward power” at any stage of the conflict. Indeed, Cairo did reap the strategic benefits of American “reward power” after the arbitral ruling in 1988.



**American mediation after the ruling (September 1988 – March 1989):**

This is the phase where the American benefits for Egypt were the clearest, because the tribunal's ruling in Egypt's favour, and the earlier American guarantees that the ruling of the tribunal should be respected and implemented by all sides, has driven Washington's policy to support the Egyptian side based on the Tribunal's rulings. This was especially true, since the Reagan Administration in Washington wanted to settle the Taba dispute before the Reagan-Bush presidential transition period (Abdul Hai 1991, p. 209).

Therefore, Washington pressed Israel into withdrawal, and was trying to reach a conciliatory agreement over how to manage the withdrawal and how the situation in Taba would be like after the Israeli withdrawal (El-Rasheedy 1990, p. 297-301). For instance, Washington supported the Egyptians in rejecting the post-arbitration Israeli attempts to link the implementation of the arbitration's ruling to the status of the tourist facilities in Taba and to giving special rights to the entry of Israeli tourists to Taba (Abdul Hai 1991, p. 210).

There was also the issue of Boundary Pillar 91 (BP 91). BP 91 was the last of ninety one border pillars, placed in 1906 during the days of the Ottoman Empire and extending along the border between Egypt and Mandate Palestine, from Rafah in the north to Taba in the south. BP 91 was a very important mark which would determine the boundary between Egypt and Israel. During the arbitration process, Cairo and Tel Aviv disagreed over the correct historical location of BP 91. Therefore, one key function of the Taba tribunal was to determine which location was the correct historical location of BP 91. Was it the location offered by Egypt? Or was it one of the two locations offered by Israel? Eventually, the tribunal ruled that the location offered by Egypt was the correct location of BP 91, 170 meters away from the Red Sea shore in Taba. After the final ruling of the tribunal, Israel made a problem about the direction of the 170-meter line between BP 91 and the Red Sea shore. Normally, this 170-meter line should extend from BP 90, through BP 91,

to the Red Sea shore in a straight line. Israel, however, demanded that this line from BP 91 to the shore would be shifted westward to include the hotel and the tourist facilities under Israeli sovereignty (Kemp and Ben Eliezer 2000, p. 337 – 342). The Israeli attempt to extend the line from BP 91 at a westward angle was not supported by the Americans. Washington supported the Egyptian version of extending the line from BP 90 to BP 91 in a straight line to the Red Sea shore. Eventually, the straight line was applied (Abdul Hai 1991, p. 218, 240, 244-248 and El-Rasheedy 1990, p. 298-300).

It is clear, from examining the events, that Cairo's strategic choice to use arbitration beside American mediation, or "med-arb-med", has helped Egypt reap the strategic benefits of both conflict resolution tools, during the different stages of the conflict. The hypotheses, and the version of the Strategic Selection Theory suggested for this paper, therefore, hold.

#### **IV - Conclusion:**

In terms of contributing to the literature, this paper has offered two implications. First, apart from the fact that there has been a shortage in the N=1 work on arbitration, this work has further extended the literature on the political/strategic use of arbitration, based on Wiegand and Beuck's work on "strategic selection". Egypt has chosen the mix of arbitration and American mediation on strategic bases. Arbitration was able to guarantee Egypt's right to regain Taba, given the strong legal case against Israel. Arbitration also gave Egypt a chance to face Israel's strategic advantages, which depended on imposing facts on the ground through its military presence and buildings in Taba, and Israel's ability to stall and waste time, whether before, during, or after the arbitration process. Cairo has also chosen American mediation, due to Washington's reward power, as Washington would have been a guarantor of Israel's commitment to fair practice in this dispute, and of Israeli compliance with the rulings of the tribunal.

Second, the Taba case involved a mix of arbitration and mediation. It is a case of "med-arb-med", different from the "meditation" described by



**Ker-Lindsay where one actor “switched hats.” Rather, it is a case when there was a mediator (the United States), and an arbitrator (the Taba tribunal) who worked simultaneously, following the tradition of Deason (2013) and Nigmatullina (2016) to solve a border dispute between two neighbouring states who have been in a state of war against each other only a few years earlier. This unique mix deserves more academic attention in the future when studying interstate dispute settlement.**

**The study of the different conflict resolution tools, and of their strategic selection, provides an academic opportunity to expand the academic literature. Such studies should also help provide a guideline for policymakers on how to strategically select from the vast array of methods of peaceful conflict resolution.**

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