

DYNAMICS OF SETTLEMENT FAILURE AND LITIGATION IN INTERSTATE
TERRITORIAL DISPUTES

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Abstract

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When do states litigate their territorial disputes? Existing studies of the selection of litigation as a peaceful settlement method generally emphasize broad, macro-level factors like democracy or relative power levels that often remain stable throughout a territorial claim. This means that current theories of litigation in territorial disputes provide relatively little information regarding when litigation is likely to occur, especially when a dispute lies dormant for an extended period of time. To remedy these shortcomings, I propose a theory of the timing of litigation in territorial disputes that focuses on the events that determine the “ripeness” of a dispute for the use of legal settlement methods. Settlement failure, defined as the failure of nonbinding settlement methods to resolve a dispute, provides states with information regarding the existence of bargaining deadlock. Delegating a dispute to a third party is always risky and uncertain, but when the evidence for an impasse is compelling, adjudication and arbitration become attractive for breaking the deadlock and ending the costs associated with maintaining a

dispute. Instead of facilitating bargaining, the new information provided by settlement failure encourages delegation.

To complicate matters, the effects of settlement failure vary across disputes and disputants. Economic opportunity costs, broad interests, and legalization accelerate the “path” to litigation in offshore island disputes. Legal factors also alter the calculus of settlement failure. Clear legal arguments create a legal focal point that allows states to coordinate policy around litigation. This decreases the amount of settlement failure needed to make litigation proposals likely. Finally, states that have won court cases in the past are much quicker to suggest litigation during negotiations. This dynamic occurs because positive experiences with international courts or arbitral panels enhance the perceived fairness of legal settlement methods and, therefore, the attractiveness of litigating again. The primary contribution of this dissertation involves theorizing and testing how static factors like geography combine with dynamics of settlement failure to explain when proposals for litigation become likely.

Hybrid logistic regressions employed on newly collected panel data covering territorial disputes between 1945 and 2015 are used to gauge the validity of my theoretical claims.

Pro Magdalena, sine qua non, et pro Professore Culpo, me omnis mathematicae paenitet.

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CHAPTER 1:

INTRODUCTION

1.1 Overview

A single look at a political map of the earth gives the impression that disputes over territory are a thing of the past. The proliferation of the model of the sovereign state across the globe has created a world in which any given parcel of land is theoretically controlled by one and only one state. Yet maps often obscure a much more complicated reality. Between the end of the Second World War in 1945 and 2001, states initiated 189 disputes over land (Hensel 2001). According to the Issue Correlates of War (ICOW) project, a total of 32 interstate wars and 232 fatal interstate clashes have erupted within these territorial claims.¹ Recently, disputes over islands and associated maritime rights in the South and East China Seas have increased tensions between China, its Asian neighbors, and the United States. Elsewhere, a decades-old dispute over land access to the Pacific Ocean between Bolivia and Chile continues to plague relations between the two states. Even in the twenty first century, control over land remains an important source of conflict between states.

¹ The ICOW data considers a war to be a violent attempt to settle a territorial claim that produces 1000 or more battle deaths (Hensel 2001).

Fortunately, it is often possible to settle territorial disputes without violence. The use of bilateral negotiations, in which representatives of disputing states meet to discuss sovereignty over disputed land, is often effective, as is the use of third party mediators. Sometimes these political methods of dispute resolution are insufficient for resolving the distributional conflicts that are at the heart of territorial contentions. In the now-resolved dispute between Bahrain and Qatar over the Hawar Islands, negotiations and mediation by Saudi Arabia and the Gulf Cooperation Council (GCC) were attempted repeatedly, without success (Wiegand 2012). The deadlock appears to have been the result of both economic and nationalistic interests. Valuable oil and gas resources were present in and around the disputed area, and the desire for economic revenue, coupled with Bahrain's historical connection with Zubarah, a disputed portion of northeastern Qatar, created a stalemate between the disputants. While this stalemate had the potential to produce violence, one final peaceful method for resolving interstate disputes proved effective, namely, litigation.² In 1996, both Bahrain and Qatar agreed to submit the dispute to the International Court of Justice (ICJ), a judicial body founded in the aftermath of the Second World War and charged with adjudicating interstate disputes in accordance with international law. The ensuing 2001 judgment, which parceled out control over the disputed territories by following a British treaty signed in 1939, was a complete success.³ Both Bahrain and Qatar agreed to comply with the ruling in 2001, and they have enforced

² In April of 1986, both sides issued warnings and deployed troops to the disputed territories in response to Bahrain's construction of a coast guard station on a disputed island, Fasht al-Dibal. The dispute did not escalate further, however (Wiegand 2012).

³ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment (Merits), I.C.J. Reports 2001, 40, available at <http://www.icj-cij.org/files/case-related/87/087-20010316-JUD-01-00-EN.pdf>.

its guidelines ever since (Wiegand 2012). The Hawar Islands is a poster child for the utility of litigation for settling interstate territorial disputes without violence.

The purpose of this work is to explain when states propose litigation in their territorial claims. I contend that settlement failure, or the inability of nonbinding dispute resolution methods like negotiations or mediation to resolve a disagreement, is the primary determinant of the timing of litigation proposals. Settlement failure provides information regarding the existence of bargaining deadlock. International adjudication and arbitration can break this deadlock, but only at the cost of an unpredictable and legally binding decision by an impartial third party. Thus, it is only when the need for exclusive sovereignty rights is evident and when nonbinding settlement methods have failed that litigation becomes an attractive settlement method. This argument appears intuitive, and some existing works employ settlement failure as a control variable (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). However, no nuanced baseline for the importance of settlement failure has been established, and I add to this literature by placing settlement failure at the center of my theoretical argument and by treating settlement failure as a multidimensional concept.⁴ My empirical results wholeheartedly support this theory. Across myriad disputes and disputants of all types, increases in settlement failure are strongly and positively associated with changes in preferences for litigation over time.

The most novel contribution offered by this work is its demarcation of how settlement failure interacts with static factors, including geography, legal arguments, and

⁴ Chapters 3, 4, and 5 discuss my novel approach to measuring settlement failure in detail.

past experiences, to produce litigation proposals. Different states involved in different disputes process the information from settlement failure in diverse ways. Certain characteristics of territory and states condition how quickly territorial disputants respond to settlement failure with proposals for litigation. Past research suggests that offshore territories connected to questions of maritime delimitation are more likely to experience adjudication or arbitration (Owsiak and Mitchell 2017). This is because disputes over such territories are usually economic in nature and may involve a wide variety of outside interests in the settlement process. The economic opportunity costs of maintaining offshore disputes, alongside problems with preference aggregation, incentivize quick litigation as soon as bargaining deadlock asserts itself. Chapter 3 confirms the significant interaction between settlement failure, geography, and the timing of preferences for litigation. In Chapter 4, I analyze a similar interaction between settlement failure and legal arguments. Huth, Croco, and Appel (2013) show that clear legal arguments create focal points that facilitate policy coordination in territorial disputes. I find that clear arguments also speed the onset of preferences for litigation by creating a visible “baseline” distribution of territory that states will accept via adjudication or arbitration in the presence of an intractable bargaining impasse. Finally, Chapter 5 deals with past experiences in international judicial fora. Powell and Wiegand (2014), along with Wiegand and Powell (2011), show that states with positive win-loss records in international courts and arbitral panels are more likely to propose litigation again, and vice versa. I demonstrate that this relationship is conditional upon settlement failure. Wins and losses in court, particularly when they occur during an existing dispute, significantly alter the timing of preferences for future litigation in surprising ways. In

sum, the context and characteristics of a dispute moderate the effects of settlement failure in important ways.

To comprehend my theory in full, some background knowledge of the nature and dynamics of interstate territorial contentions and international litigation is necessary. This chapter first discusses the essentials of territorial disputes between states, what they are, why they arise, and how they may be settled. After that, I address the nature of litigation in territorial matters. International litigation is distinct from litigation in domestic legal settings for a variety of reasons. This knowledge will be particularly useful in subsequent chapters, which seek to uncover and test the causal factors that link the incidence of litigation to the dynamics of interstate territorial disputes.

1.2 The Nature of Interstate Territorial Disputes

Interstate territorial disputes are, at their heart, disagreements over who has the right to exercise sovereignty over a particular area of land. Under modern international law, sovereignty over territory is defined as the exclusive competence of a state to govern and dispose of a geographic region.⁵ The rights accrued to the wielder of territorial sovereignty are substantial. Unrivalled authority over the population of a territory, the power to use and dispose of physical resources within a territory, and the right to perform activities beneficial to a territory's population are the most significant of these rights,

⁵ Importantly, maritime rights are connected to territorial rights. Under the modern law of the sea regime, states may only claim sovereignty over territorial seas within a certain distance from a shoreline (Crawford 2008).

though others exist (Cassese 2005, 49-52).⁶ Exclusivity is an integral part of the definition of sovereignty and a substantial explanation for why states desire it. Occupation and other forms of territorial possession may give a state some access to the resources within a territory, but such methods are often contested by other states and costly to maintain over time. Acquiring sovereignty removes the contested nature of territorial possession. (Shaw 2014). In order to exercise the powers of territorial sovereignty under international law, states must establish title to a particular territory. Shaw (2014) defines title to territory as “both the factual and legal conditions under which territory is deemed to belong to one particular authority or another” (Shaw 2014, 354). In other words, if territorial sovereignty is the package of rights that a state exercises over its own territory, title is the basis upon which a state lawfully and factually exercises said rights. Territorial sovereignty may be exercised over land contiguous to the main body of a state’s territory or over islands within a state’s territorial sea.⁷

The conditions that demonstrate exclusive title to land are complex. Since the end of World War II, international law has recognized three legitimate methods for acquiring title to territory. Occupation involves continuously and peacefully occupying a territory previously governed by no other state with intent to exercise sovereignty (Jennings 1963). Cession involves one state voluntarily conceding a territory to another state, while

⁶ Territorial sovereignty conveys four other rights upon the state exercising it, namely, the right to exclude the agents of other states from entering a territory, immunity from the jurisdiction of foreign courts for actions taken by the holder in its capacity as sovereign, functional immunity for the holder’s representatives in a territory, and the right to respect for the life and property of citizens of a territory when going abroad (Cassese 2005, 49-52). However, these rights are of secondary importance to territorial disputes.

⁷ In some cases, sovereignty may be exercised over non-contiguous territory by a colonial power. For instance, France maintains sovereignty over several small islands in the Indian Ocean off the coasts of Madagascar, Mauritius, and Seychelles (Brunet-Jailly 2015; Shaw 2014).

accretion allows territory created by natural, geographic processes to be added to the territory of an existing state. Violent and unilateral methods of territorial acquisition, such as annexation, are illegal and incapable of supporting a claim to title (Crawford 2008). Furthermore, modern international legal bodies also consider alternative sources of title, such as self-determination in the case of newly independent states, geographical or ethnic contiguity, and historical legal claims and relationships, when establishing exclusive title.⁸ The most important of these alternative sources of title is *uti possidetis juris*. This legal principle states that newly-independent postcolonial states retain the administrative borders established by the former colonial power (Crawford 2008). *Uti possidetis juris* became one of the most significant and controversial sources of title to land in the modern world as a host of newly independent states sought to establish their borders after decolonization in the wake of the Second World War.⁹ While the guidelines for acquiring title to land are somewhat imprecise, the regulations governing maritime claims with island components are more lucid. Since 1982, maritime claims have been primarily governed by the United Nations Convention on the Law of the Sea (UNCLOS), a document that established precise rules for the content and extent of states' rights to territorial seas.¹⁰ However, maritime disputes continue to cause disagreements between

⁸ For example, in the *Minquiers and Ecrehos* decision, the ICJ considered French and British legal claims based on feudal relationships between the population of the disputed islands, the medieval dukes of Normandy, and the British monarchy. The Court ultimately ruled in favor of Britain (*The Minquiers and Ecrehos Case* (France/United Kingdom), ICJ Judgment of November 17, 1953).

⁹ New states in the former Spanish colonies in Latin and South America developed *uti possidetis juris* in the nineteenth century as a method of resolving border conflicts (Shaw 2014). The principle has since spread to the rest of the world, and it is recognized as law by the ICJ and other influential legal sources.

¹⁰ For the full text of the current convention, see http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

states precisely because maritime rights are connected to land rights. Since the extent of a state's territorial sea is determined by the extent of its land-based territory, title to land frequently determines maritime rights.

Territorial disputes result when two or more states claim title to a single region of land due to overlapping legal, historical, or ideological claims. In such cases, the disputants each propose that they have the exclusive right to exercise territorial sovereignty within the area in question. These claims are frequently multifaceted and overlapping. For instance, during the judicial proceedings surrounding the Hawar Islands adjudication, multiple legal arguments were advanced by both sides for each of the five territories in question (Plant 2002). In the case of Zubarah, a disputed portion of the Qatari peninsula, Bahrain argued that it retained title, both because the Ottoman Empire and Britain respected Bahrain's claim and because tribal ties with groups in the area constituted the exercise of territorial sovereignty.¹¹ In contrast, Qatar argued that it possessed title because treaties involving the aforementioned colonial powers reflected a rejection of Bahrain's alleged sovereignty. Importantly, conflicting legal claims are both the source of disputes over territory and support for claims advanced in political and legal settlement forums, particularly when a dispute is submitted for litigation. Furthermore, some territorial claims may be based, not on overlapping and mutually exclusive claims to title, but on whether a territory can support a sovereignty claim in the first place. This occurred during the South China Sea Arbitration, during which an arbitral panel ruled that certain Chinese maritime claims in the South China Sea were invalid because they

¹¹ *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (Qatar v. Bahrain), ICJ Judgment of March 16, 2001.

were based on ownership of rocks and shoals that could not support territorial sovereignty and its associated maritime rights.¹² Nonetheless, in the South China Sea and in the Hawar Islands, the right to exercise sovereignty over a given territory was in dispute precisely because the disputants disagreed over who held exclusive title to the area in question.

1.3 Resolving Territorial Disputes

How are disputes over title to land resolved? Generally speaking, “resolution” in the context of territorial disputes means that title to the targeted territory is no longer in dispute, with all disputants agreeing on the precise boundaries of their powers of sovereignty within the formerly disputed region. Territorial disputes thus represent an instance of distributional conflict in which all disputants prefer complete control over a territory but must engage in bargaining to arrive at some agreeable distribution of land rights (Wiegand 2011). Given the value of the resources that territory can provide, along with the intangible value that land may have in ideological, ethnic, or even religious terms, arriving at a mutually agreeable resolution can be difficult (Hensel et al. 2008; Tir 2010). It is important to note that the mere existence of a territorial dispute does not necessarily create conflict between the disputants. Legal ambiguities surrounding ownership of a tract of land do not always spur states into action. Indeed, often the easiest course of action for a state in any given territorial dispute is to do nothing at all, and

¹² *The South China Sea Arbitration*, Arbitral Award of July 12, 2016.

states fail to act to resolve a territorial claim in 67 percent of all recorded claim-state-years, 1945-2015.¹³

However, when states do choose to attempt a settlement, four options are available (Wiegand and Powell 2011; Vasquez 1993). First, a state may attempt to use the threat of or the use of force to leverage an opponent into accepting some preferred territorial settlement. While the use of coercion to acquire title to land is technically illegal under international law, it is also a common tactic. Alternatively, a state may resort to peaceful methods of dispute resolution. The first and most common of these is bilateral negotiations. These occur when officials from each of the disputants meet to discuss a potential distribution of the disputed territory. Negotiations are entirely political in nature, meaning that they do not involve formal legal proceedings and that the process by which a final settlement may be reached is likely to involve issue linkages, bargaining strategies, and the use of threats and leverage to generate a settlement (Wiegand 2011). Additionally, bilateral negotiations are among the least costly of the peaceful settlement methods, since they may be structured according to the disputants' needs and they do not involve any third parties. Because bilateral negotiations are cheap, informal, and involve minimal risk due to their voluntary nature, states nearly always attempt to negotiate before moving on to other peaceful settlement methods (Gent and Shannon 2011; Lefler 2015; Wiegand and Powell 2011). 24 percent of all years recorded in my data involve attempts at bilateral negotiations.

¹³ This and all subsequent peaceful settlement statistics come from the dataset compiled for this project. The dataset's unit of analysis is the claim-state year, meaning that there is one observation for each year that a state is involved in a territorial claim. This data was partially derived from Wiegand and Powell (2011) and Hensel (2001), updated to 2015 and converted into panel data format. Chapters 3, 4, and 5 discuss my data in more detail.

If such methods fail, however, third parties exogenous to the dispute at hand, including states and international organizations, may be brought in to facilitate the settlement process. Third party settlement methods are frequently divided into two categories: non-binding and binding. States employ non-binding third party methods when they agree to allow a third party to weigh in on the dispute but stop short of allowing the third party's opinion to be legally binding. In essence, this means that a third party may suggest a distribution of territory, but that the disputants will not be bound by international law to accept said distribution. Additionally, since the third parties involved in non-binding methods are either interested states or mediators from international organizations, non-binding third party methods frequently consider political criteria similar to that of bilateral negotiations when arriving at a settlement. Mediation is the most common of these methods, but conciliation, inquiry, or good offices may be used. Mediation and conciliation involve inviting a third party to attend rounds of negotiations and offer potential solutions to problems when appropriate (von Glahn and Taulbee 2013). Inquiry involves convening a board of experts to determine the facts in a case without issuing a binding ruling, while good offices involves the use of a third party as a passive "go-between" to facilitate discussions. 5 percent of recorded claim-state-years involve attempts at non-binding third party methods. Binding third party settlement methods are so called because they result in a judgment or decision that will legally bind all disputants to compliance and because they primarily use formal and legal, rather than political, criteria for arriving at a distribution of disputed territory. This does not mean that binding decisions are guaranteed to evoke compliance, nor does it guarantee any kind of enforcement. Rather, it simply means that the decision resulting from the use of such

methods will be expected to evoke compliance from all parties, win or lose, and that the judgment constitutes a binding obligation under international law. The binding third party settlement methods are arbitration and adjudication. The submission of a dispute for a binding settlement is known as litigation. The causes of the timing of litigation are the primary focus of this project.

1.4 Litigation in Territorial Disputes

Arbitration and adjudication are unified by the legal criteria that they employ and by the binding nature of their final decisions. Each is distinguished by the agents employed to generate the decision and by the structure of the decision-making process. Arbitration is an ad hoc method that allows states to select their own judges to sit on an arbitral panel and render a decision, known as an arbitral award (Cassese 2005). Arbitration gives states substantial latitude to decide the principles and procedures by which the arbitral panel will decide a dispute, although the procedures used are always in accordance with international law.¹⁴ These choices are created and rendered binding by means of a *compromis*, a special treaty approved by both parties in advance of the judgment. The *compromis* grants the arbitral panel jurisdiction to rule in a particular case (von Glahn and Taulbee 2013). While arbitral panels may be constituted entirely without external help, the Permanent Court of Arbitration (PCA) at The Hague can provide

¹⁴ For example, in the Rann of Kutch arbitration between India and Pakistan, the arbitral panel was specifically authorized by the disputants to employ principles of equity, or fairness, when determining the final territorial distribution in the absence of other definitive legal principles. *The Indo-Pakistan Western Boundary (Rann of Kutch) Between India and Pakistan* (India/Pakistan), Arbitral Award of February 19, 1968.

logistical support to states interested in arbitrating their disputes.¹⁵ Despite the considerable flexibility of arbitration, it is the rarest of all the peaceful settlement methods, at 1 percent of all claim-state-years.¹⁶

Adjudication uses permanent international courts with formalized principles and procedures to render a legally binding verdict. In adjudication, states have little to no say in who the judges of a case will be or what principles will be considered decisive.¹⁷ Furthermore, formal international courts follow formal procedures laid down by associated statutes, a far cry from the ad hoc nature of an arbitral panel's *compromis*. The only formal international court that routinely considers interstate territorial disputes is the International Court of Justice (ICJ).¹⁸ Despite the heightened uncertainty surrounding a binding ruling issued by an international court, adjudication is far more common than arbitration. Adjudication is proposed in 3 percent of all claim-state-years recorded in my data. To date, the ICJ has ruled in a total of 34 cases involving the disposition of territorial rights.¹⁹ Thus, while rare relative to more politicized settlement methods,

¹⁵ The PCA provides facilities and a registry for ongoing arbitrations, pre-established formulae for *compromis* agreements, and a list of qualified individuals that may be selected to sit on arbitral panels. For more information see <https://pca-cpa.org/>.

¹⁶ Despite its relative rarity, arbitration is among the most venerable of settlement methods. The first modern interstate arbitration took place between the United States and Great Britain as a result of Jay's Treaty in 1795. Furthermore, the PCA was founded in 1899, predating the foundation of the Permanent Court of International Justice (PCIJ), a predecessor of the ICJ, by 23 years (von Glahn and Taulbee 2013).

¹⁷ One exception to this rule occurs when no judge sitting on the ICJ is a national of a particular state seeking litigation. In such cases, said state may select one judge from among its own qualified citizens to sit on the court for the duration of the case. For more information on the selection of ICJ judges, see <http://www.icj-cij.org/court/index.php?p1=1&p2=2>.

¹⁸ The ICJ was established in 1945 as a successor to the Permanent Court of International Justice (PCIJ) associated with the League of Nations (Shaw 2014). For more information on the ICJ, see <http://www.icj-cij.org/>.

¹⁹ For a full list of pending and completed ICJ cases, see <http://www.icj-cij.org/en/list-of-all-cases>.

adjudication represents a venerable and widespread practice that is capable of definitively resolving territorial conflict.

1.4.1 The Process of Litigation

As with international litigation in other issue areas, litigation in territorial matters proceeds in three stages. First, disputants must indicate their consent to have the dispute adjudicated or arbitrated. In legal terms, this amounts to establishing the jurisdiction of an international court or arbitral panel. The importance of this step in the litigation process should not be understated. Litigation cannot proceed without the formal consent of all parties involved, and the establishment of consent also verifies the obligation to abide by any eventual legal decision (Shaw 2014). However, there is a substantial distinction between formal, legal consent to the jurisdiction of a court or arbitral panel and immediate consent to adjudicate or arbitrate a particular dispute. To illustrate, consider, again, the South China Sea Arbitration between the Philippines and China. Famously, the arbitral panel convened by the Philippines at The Hague ruled that it had jurisdiction in the case, created by both parties when they accepted the United Nations Convention on the Law of the Sea (UNCLOS) and chose arbitration as a preferred settlement method under Article 287 of the Convention.²⁰ Yet despite the existence of legal jurisdiction, China declared that it did not immediately consent to arbitration in the dispute with the Philippines, and it declined to attend the arbitral panel's proceedings. Naturally, China also advanced some legal arguments challenging the jurisdiction of the panel, but China's

²⁰ *The South China Sea Arbitration*, Arbitral Award of July 12, 2016, available at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>. For the full text of UNCLOS, see http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

protests clearly indicate that formal consent and immediate consent in a particular dispute are not one and the same.

There are several ways to establish consent. By signing on to the compulsory jurisdiction of an international court in territorial matters, a state may signal its consent to said court's jurisdiction. The basis for the ICJ's compulsory jurisdiction is contained in Article 36(2) of the ICJ Statute. If all disputants accept the ICJ's compulsory jurisdiction by signing and ratifying Article 36(2), and all have no reservations dealing with territorial disputes, then the Court's jurisdiction is established.²¹ Compulsory jurisdiction can be somewhat problematic in territorial disputes precisely because of the disconnect between immediate and formal consent to adjudication. Cases in which the ICJ's compulsory jurisdiction was invoked over the objections of one disputant include the Bakassi Peninsula dispute between Cameroon and Nigeria and the dispute over San Andres and Providencia islands between Nicaragua and Colombia.²²

Other, less adversarial methods for establishing consent are also available. For the ICJ, compromissory clauses embedded within particular treaties may establish jurisdiction for disputes limited to the subject matter of said treaties (Mitchell and Powell 2011; Shaw 2014). Since this method amounts to including a clause in a negotiated bilateral or multilateral treaty, it is theoretically a more effective way for states to shape their commitments to international courts. Alternately, states may negotiate an ad hoc

²¹ In the context of an international court's compulsory jurisdiction, reservations are statements made by states upon signing a relevant clause that limit the extent of a court's jurisdiction by issue, time period, or subject (Shaw 2014, 784-785).

²² *Case concerning the Land and Maritime Boundary Between Cameroon and Nigeria* (Cameroon v. Nigeria), Preliminary Objections, ICJ Judgment of June 11, 1998; *Case Concerning the Territorial and Maritime Dispute* (Nicaragua v. Colombia), Preliminary Objections, ICJ Judgment of December 13, 2007.

“special agreement” to submit a dispute to an international court or arbitral panel. When adjudication is preferred, mutual agreements used for territorial disputes generally lay out which court will be used as well as what issues the court will decide. When arbitration is utilized, the *compromis* is more extensive, containing not only the issues to be decided but also procedures for how the judges will be selected and how said judges will make their final decision.²³ In both cases, the mutual agreement legally binds the disputants to comply with decision of the invoked judicial body.

Disputes over the jurisdiction of a court or arbitral panel when mutual agreement is employed are essentially nonexistent because all disputants are free to reject the agreement or *compromis* during negotiations. Yet disputes over jurisdiction are common when compulsory or compromissory clauses are used. The causes of such disputes are legion. States may object that a reservation to a particular dispute settlement clause brackets out territorial matters from a judicial body’s consideration, or they may object that the timing of an opponent’s acceptance of compulsory jurisdiction was designed to take unfair advantage of a state’s own acceptance.²⁴ Alternatively, many treaties with compromissory clauses require that all political methods of dispute resolution be exhausted before binding methods may be tried. States may contend that this condition is not met in a particular case. To resolve jurisdictional controversy, standard practice

²³ Apart from specialized instruments like UNCLOS, the *ad hoc* agreement, or *compromis*, is the only way to invoke an arbitral panel.

²⁴ For example, in the 1952 Anglo-Iranian Oil case between the United Kingdom and Iran, the ICJ declared that it lacked jurisdiction because reservations included in Iran’s acceptance of the Court’s compulsory jurisdiction excluded the case from the Court’s competence. *Anglo-Iranian Oil Co. Case (United Kingdom v. Iran)*, Preliminary Objections, Judgment of July 22, 1952, I.C.J. Reports 1952, 93, available at <http://www.icj-cij.org/files/case-related/16/016-19520722-JUD-01-00-EN.pdf>.

among international courts and arbitral panels is to hear the arguments of all parties to a dispute, then decide for themselves whether proper jurisdiction exists (Shaw 2014; von Glahn and Taulbee 2013). This amounts to adding a preliminary set of formal hearings on jurisdiction to the existing legal process, with a preliminary, binding judgment on whether jurisdiction is extant. If the court or arbitral panel determines that it has jurisdiction, then the proceedings to determine the merits of the disputants' claims commence. If, however, the judicial body decides that it lacks jurisdiction, the case cannot proceed and the disputants must resort to other methods of dispute resolution. A court will not reject its own jurisdiction when all disputants consent immediately to adjudication because states must lodge preliminary objections to a court's jurisdiction before the court will open preliminary hearings on the matter. If no such objections are raised, the court will proceed to adjudicate the dispute without delay.

Once the jurisdiction of a court or arbitral panel is established, the proceedings turn to the dispute itself. Oral arguments are made, and all disputants enter written evidence into the record.²⁵ Afterwards, the judges produce a decision regarding the distribution of the disputed territory based both on the evidence presented and the relevant principles of international law. As Shaw (2014) notes, "title to territory...is more often than not relative rather than absolute. Thus, a court, in deciding to which of contending states a parcel of land legally belongs, will consider all the relevant arguments and will award the land to the state which relatively speaking puts forward the better (or best) legal case" (354). While legal decisions in territorial matters are often conceived of

²⁵ More information is available at <http://www.icj-cij.org/court/index.php?p1=1&p2=6>.

as winner-take-all affairs, this is not always the case. Consider that, in the Hawar Islands dispute, the ICJ awarded two of the disputed territories (the Hawar Islands and Qit'at al-Jaradah) to Bahrain and three (Zubarah, the Janan Islands, and Fasht al-Dibal) to Qatar (Wiegand 2012). This complex approach to the distribution of disputed territory is primarily the result of an interaction between international legal principles governing title to territory and the structure of the disputants' initial agreement to litigate. In the Hawar Islands case, each of the five discrete parcels of territory were distributed separately according to what the ICJ judged to be the applicable principles of international law and factual evidence. While a complete victory in which one disputant received all five territories was possible, it was improbable given the multifaceted nature of the legal claims. However, in simpler disputes that deal with one or two disputed boundaries or islands, courts or arbitral panels are much more likely to produce zero-sum distributions that advantage one disputant over another.

1.4.2 Compliance

Once an international court or arbitral panel renders a final judgment, the role of judicial institutions within a territorial dispute ceases and compliance with the ruling is expected under international law. The judicial actors involved in territorial litigation function solely as theoretically unbiased third parties tasked with handing down a legally binding distribution of disputed territory (Shaw 2014; O'Connell 2008). They are not involved in the process by which litigation is selected as a resolution method or in supervising compliance with the ruling by the disputants. Judicial institutions like the ICJ only become active after a ruling is handed down if one or more disputants asks for a

clarification or revision of a previous ruling.²⁶ Clarifications are not formal appeals of a ruling because new facts, evidence, and testimony are not considered (Clapham 2012). They merely deal with the proper interpretation of all or part of a previous decision. Revisions, in contrast, may be initiated when states claim to have discovered new facts that compromise a preexisting judicial ruling. A clarification ruling may significantly revise the substantive effects of a previous ruling in by refining ambiguities in the original judgment, while a successful application for revision may do the same by introducing new evidence into an otherwise settled dispute.

Even in light of these processes, a binding ruling in a territorial dispute does not guarantee that all disputants will accept the ruling's terms. All international courts lack regular, immediately available enforcement powers (Johns 2012; 2015; O'Connell 2008). Therefore, the penalties associated with rejecting a court or arbitral panel's ruling are much more nebulous than in a domestic legal system. They include possible sanctions, both by an opponent in the dispute or by third parties interested in enforcing the rulings themselves. Additionally, there may be important reputational costs associated with denying the validity of a properly rendered judicial decision. Furthermore, rejecting a court ruling allows the costs of maintaining a territorial dispute to continue to accrue.²⁷ Despite these risks, states may still decide that the costs of noncompliance are

²⁶ This occurred in the Temple of Preah Vihear case, when Cambodia requested that the ICJ clarify certain points of a 1962 ruling in 2011. *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Application Instituting Proceedings, April 28, 2011, available at <http://www.icj-cij.org/files/case-related/45/9249.pdf>.

²⁷ For instance, Simmons (2005) finds that ongoing territorial disputes create costs in terms of lost trade between disputants.

outweighed by the benefits of rejecting a legal ruling, particularly if the ruling requires a state to make costly territorial concessions.

A substantial literature in the fields of law and political science examines the causes of noncompliance in international litigation (Johns 2012; 2015; Mitchell and Hensel 2007; Llamzon 2007). Yet in territorial disputes, noncompliance with judicial rulings is extremely rare. Mitchell and Hensel (2007) find that, of the 29 territorial judgments that the ICJ and its predecessor, the Permanent Court of International Justice (PCIJ) rendered up to 2007, only one, the 1997 decision over the Gabčíkovo-Nagymaros dam project, experienced complete rejection by both disputants. Three other cases experienced partial noncompliance by at least one party after the initial judgment, though each of these cases eventually produced full compliance after further negotiations and clarification hearings. While similar data on compliance rates for arbitral panels is not immediately available, many high-profile arbitrations, including that between Yemen and Eritrea in the Hanish Islands case and that between India and Pakistan in the Rann of Kutch dispute, have achieved complete success (Lefebvre 1998; Untawale 1974). However, noncompliance with arbitral panels is still a noted phenomenon. Chinese noncompliance with the award of the South China Sea arbitral tribunal is one high profile example of this. Argentina's immediate failure to comply with an arbitral panel's award in the Beagle Channel dispute is another, although Argentina eventually accepted the award's terms in 1984 (van Aert 2016). In any case, the empirical record shows that international courts and arbitral panels are effective at resolving territorial disputes peacefully. Despite the emphasis of many scholars on the causes and cures of

noncompliance, outright rejections of judicial decisions in territorial matters are the exception rather than the rule.

1.5 Conclusion

From the information presented in this chapter, international courts and arbitral panels appear to be useful, if somewhat rarely used, venues for international dispute settlement in territorial matters. Proceedings in international courts and arbitral panels are formal, final, and binding, whereas those of negotiation, mediation, and the like are much less rigid. In the next chapter, I construct a theory that explains when states are likely to prefer litigation to nonbinding alternatives. My argument rests upon the importance of settlement failure, or the inability of nonbinding settlement methods to resolve a dispute, for the timing of litigation preferences. Chapter 3 tests these claims and how settlement failure interacts with geography to produce litigation preferences. Chapter 4 analyzes a similar interaction between settlement failure and legal arguments. Chapter 5 interacts past experiences with the international judiciary and settlement failure, with unexpected results. Chapter 6 concludes with recommendations for future research and policy relevance.

CHAPTER 2:

THEORY

2.1 Introduction

Why do states use international courts and arbitral panels to resolve their territorial disputes? While the literature on this topic is quite extensive, its ability to explain the litigation of interstate territorial matters is limited by its emphasis on macro-level structural variables that cannot explain why legal settlement methods are employed at certain time points and not at others. By way of illustration, consider again the Hawar Islands dispute between Bahrain and Qatar. Neither state was considered a democracy at any point during the dispute, nor did either side have any past experience in international courts or arbitral tribunals (Marshall and Jagers 2011; Wiegand and Powell 2011). Yet litigation still occurred, contrary to the expectations of the established literature (Allee and Huth 2006). Power levels were relatively even and stable throughout the lengthy dispute, and existing theories regarding territorial salience also cannot explain why the disputants went to court in 2001, rather than maintaining a stalemate or proceeding via non-legal methods of dispute resolution (Hensel 2001; Hensel et al 2008; Huth 1996; Singer, Bremer, and Stuckey 1972).²⁸ Both disputants were relatively conservative

²⁸ This dispute escalated to the brink of war in 1986, when Bahrain began construction on a coast guard station on Fasht al-Dibal, one of the disputed islands (Wiegand 2012). Qatar responded with a

Islamic Law States (ILS), a category of states shown to be wary of international judicial institutions (Powell 2015; 2018). Nonetheless, the dispute was submitted to the International Court of Justice (ICJ) for adjudication, received a formal ruling in 2001, and can be held up as a sterling example of the power of legal settlement methods to resolve volatile and intractable disputes over territory.

I argue that a comprehensive theory of the timing of litigation in territorial disputes is necessary to remedy the limitations of the litigation literature and comprehend the causes of a risky, yet extremely effective peaceful settlement method. Policymakers frequently cite settlement failure, defined as the inability of nonbinding settlement methods to resolve a dispute, as a key determinant of the timing of proposals for adjudication or arbitration. Settlement failure provides policymakers with information concerning the existence of bargaining deadlock. In the absence of settlement failure, litigation is risky because judicial decisions are unpredictable and the stakes in territorial cases are unusually high (Mitchell and Powell 2011; Hensel 2001). Nonbinding bargaining is more attractive as a low-cost settlement method that preserves decision control over the distribution of territory (Gent and Shannon 2011). However, when deadlock exists, states have two alternatives. Either they may give up the contention, unlikely when valuable territory is on the line, or they may litigate, an unpredictable option that nonetheless will establish a binding distribution of territory regardless of the nature of the bargaining impasse. Thus, mounting levels of settlement failure over time increase the attractiveness of litigation to territorial disputants.

military occupation of the island and the subsequent capture and detainment of the Bahraini construction workers for nearly a month.

This causal story is intuitive, but the way that states process the information from settlement failure is not constant across all disputes and disputants. Disputes over offshore islands are usually connected with issues of maritime delimitation and natural resource extraction. They also have the potential to invoke the interests of many parties, creating problems of preference aggregation during the settlement process (Owsiak and Mitchell 2017). To establish disputed property rights and to avoid fruitless bargaining, states litigate offshore contentions more rapidly and in response to less settlement failure than land-based contentions. Clear legal arguments create legal focal points that themselves establish a “baseline” distribution of territory suggested by international law (Huth, Croco, and Appel 2013). This accelerates the “path” to litigation in the presence of bargaining deadlock. Finally, states tend to conflate past successes and failures in court with future performance in an attempt to leverage any available information towards increasing the predictability of international judicial institutions (Powell and Wiegand 2014; Wiegand and Powell 2011). An exogenous victory in court therefore increases the effects of settlement failure in a dispute by disposing a state more favorably towards future litigation. Herein lies the most important contribution of this work to the literature, namely, that time-invariant factors like legal arguments combine with the information provided by settlement failure to determine the timing of proposals for litigation. Figure 2.1 summarizes this theoretical model in graphical form.

The contribution of this dissertation to the study of international courts and territorial conflict is both theoretical and empirical. I aim to create and test a comprehensive model of the timing of preferences for litigation that can explain the

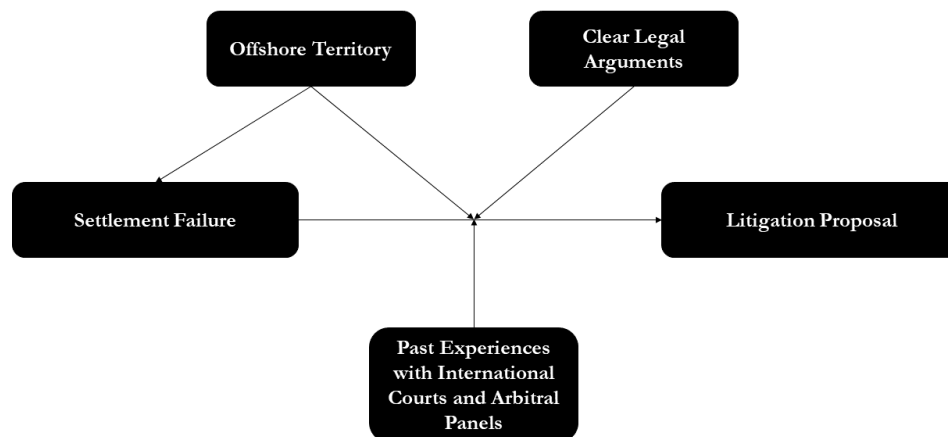


Figure 2.1: Theory of the Timing of Litigation Proposals in Territorial Disputes

occurrence of litigation proposals in particular disputes without losing the ability to produce generalizable conclusions. While a number of new and old variables will be used to test this theory, its general nature should allow future researchers to slot new empirical measures into its conceptual framework with ease. Furthermore, my conceptualization of the causes of litigation increases the policy relevance of the existing literature by focusing on timing. Knowing when litigation proposals are likely to occur is extremely useful for scholars and policymakers with an interest in resolving territorial conflict or increasing the attractiveness of international courts as a settlement alternative. As such, by proposing and testing a nuanced theory of international litigation, my dissertation fills a substantial gap in the established literature while increasing the predictive power of current models of the settlement of territorial disputes.

2.2 Settlement Failure and the Timing of Litigation Proposals

Formal expressions of state consent are of limited use for explaining the timing of litigation in territorial conflict.²⁹ As discussed in the previous chapter, consent to the jurisdiction of an international court merely opens the door to the possibility of litigation; it does not cause legal proceedings to take place. Indeed, even when disputants indicate consent immediately before litigation, as in the 1994 submission of the Bakassi Peninsula case to the ICJ by Cameroon, or when arbitration is consented to by *compromis*, the recognition of a judicial body's competence is often a product of, rather than a cause of, the disputants' drive to use legal settlement methods to resolve a territorial dispute.³⁰ The question of why states pursue litigation at certain times, often accompanied by declarations of consent to a preferred court's jurisdiction, remains unanswered.

Therefore, to theorize the timing of international litigation in territorial matters, the process by which decision makers arrive at legal settlement methods as a preferred outcome at a particular point in time must be modeled. Much of the current literature focuses on explaining either proposals for litigation (e.g. Powell 2015; Wiegand and Powell 2011) or the actual institution of legal proceedings (e.g. Allee and Huth 2006; Huth, Croco, and Appel 2013). Proposals for litigation are defined as any visible attempt

²⁹ For a selection of theories explaining formal state consent in the context of the ICJ, see Bilder (1998), Gamble and Fischer (1976), Mitchell (2002), and Mitchell and Powell (2011).

³⁰ With French guidance, Cameroon recognized the ICJ's compulsory jurisdiction on March 3, 1994, less than a month before it unilaterally submitted the Bakassi case to the ICJ. This allowed Cameroon to exploit Nigeria's similar commitment to the Court's jurisdiction, a tactic to which Nigeria strongly objected. *Land and Maritime Boundary between Cameroon and Nigeria*, Preliminary Objections, Judgment, I.C.J. Reports 1998, 275, available at <http://www.icj-cij.org/files/case-related/94/094-19980611-JUD-01-00-EN.pdf>.

by authorized representatives of a particular state to advance litigation as a preferred dispute resolution method (Powell 2015; Wiegand and Powell 2011). Such proposals may take many forms: they may be calls for adjudication or arbitration in the context of ongoing negotiations, unilateral calls for legal settlement in official statements, or even the unilateral submission of a case to the ICJ, accompanied by an invitation to the opponent to appear in court (Johns 2015). Proposals for litigation are relatively numerous compared to successful instances of litigation, and they may either function as a genuine attempt to initiate legal settlement or as a tactic to internationalize a dispute and gain leverage in negotiations.³¹ By raising the possibility of litigation, these proposals initiate the litigation selection process, signaling one state's preference for legal settlement. Even in cases of submission by mutual agreement or the negotiation of a *compromis* to authorize arbitration, one side must propose litigation before the issue can be debated and formally agreed upon.³² The timing of litigation proposals can tell us much about when a territorial dispute is "ripe" for adjudication or arbitration.³³

³¹ Because such proposals are generally low cost and often fail to end in legal action, they may often be viewed as a form of "cheap talk" that nonetheless reflects the dispute resolution preferences of the proposer at a given time point. Zunes and Mundy (2010), Hodges (1983), Franck (1976) and Damis (1983) detail one particular case, the Western Sahara dispute between Spain and Morocco, in which proposals for ICJ adjudication were used in this manner.

³² Prior work, including Allee and Huth (2006), models this process as a series of negotiations or rounds of bargaining. In each round, after various solutions to the dispute are proposed and discussed, litigation is either attempted or not attempted. There are multiple problems with this model: first, it unnecessarily excludes proposals for litigation that occur outside of the context of formal negotiations. Second, it conflates proposal and acceptance by examining only acceptance and potentially ignoring the importance of prior litigation proposals for future rounds of bargaining.

³³ My argument draws from Zartman (1989) by claiming that certain periods within a dispute are more "ripe" for litigation than others. Yet Zartman focuses on all peaceful settlement methods and uses "intractability" to mean the inability of a disputant to settle a dispute unilaterally. I use settlement failure to denote the failure of all non-legal settlement methods, and I focus on the use of one particular peaceful resolution method, litigation.

I argue that settlement failure is the most important predictor of the timing of proposals for litigation. Settlement failure is defined as the consistent, repeated inability of bilateral talks, non-binding third-party methods, and coercive measures to bring about a resolution in an ongoing dispute. When present, settlement failure signals that some characteristic of the dispute or disputants is preventing a mutual settlement and will continue to do so in the future. This affects the probability of a litigation proposal by highlighting the inefficacy and inefficiency of non-legal settlement methods. In effect, settlement failure provides policymakers with information regarding the existence of bargaining deadlock. As settlement failure mounts over time, the evidence for deadlock becomes more compelling, raising the attractiveness of litigation as a method for breaking the impasse. In contrast to many of the explanatory variables proposed by the literature, settlement failure is, by definition, time variant. Moreover, the treatment of settlement failure as the primary “engine” behind the timing of preferences for litigation explicitly models iterated settlement attempts as a coherent process.

Settlement failure as a variable is not absent from the literature entirely. Gent and Shannon (2011), Hensel et al. (2008), Lefler (2015) and others all include some measure of settlement failure in their analyses as a control variable. My additions are three. First, I examine settlement failure as a key determinant of litigation proposals, rather than relegating it to the status of a conditioning factor. Second, the literature only discusses the quantity of prior settlement activity (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). But both the number and type of prior failed settlement attempts contribute to

settlement failure.³⁴ Consider a dispute with six failed settlement attempts. If all six involved bilateral negotiations, the disputants might well be inclined to attempt mediation, rather than adjudication or arbitration, because mediation is less risky and no information is available regarding its effectiveness. However, if the six failed attempts included both negotiations and mediation attempts, all to no effect, the evidence for an insurmountable deadlock is far more compelling. Thus, I treat settlement failure as a multidimensional concept in order to assess the information available to policymakers accurately. Finally, I do not assume that the informational value of prior settlement attempts fades regularly over time. To illustrate, Hensel et al. (2008, 131) weight past settlement attempts by age, with each attempt contributing 10 percent less “value” for each year of time elapsed. However, this linear fading process is somewhat arbitrary, and there is no reason to believe that policymakers automatically “forget” settlement attempts that occurred more than ten years prior. Thus, my work offers an improvement upon the literature’s measurement of settlement failure while placing this variable at the center of my theoretical model.

The Hawar Islands case exemplifies this line of argument. The dispute formally began in 1971 when both Bahrain and Qatar gained independence from the United Kingdom (Wiegand 2012). However, litigation was not formally initiated until 1991,

³⁴ The importance of both dimensions should not be understated. While prior literature on the subject generally focuses on the number of failed settlement attempts (Gent and Shannon 2011), the failure of multiple types of settlement method arguably provides more information regarding the ineffectiveness of non-legal resolution methods than simple counts. For instance, the failure of five rounds of negotiations in a dispute simply signals that negotiations cannot resolve the conflict. Yet the failure of a subsequent mediation attempt in the same dispute indicates that some aspect of the dispute simply cannot be resolved by peaceful, non-binding means. This provides a powerful argument in favor of litigation, so long as both sides maintain a strong need for title or domestic political incentives for settlement.

when Qatar unilaterally submitted the dispute to the ICJ using an adjudication clause in the Saudi-mediated agreement as grounds for the Court's jurisdiction. What accounts for this delay? In the 1970s and early 1980s, few attempts were made to resolve the contention. Consequently, little information was available regarding the effectiveness of nonbinding settlement methods. However, by 1991 multiple rounds of negotiations and mediation attempts in 1976, 1988, and 1990 had all failed to produce a settlement. This provided substantial evidence for the existence of intractable bargaining deadlock. Therefore, as Wiegand (2012) notes, Qatar decided to resort to ICJ adjudication simply in order "to move things along" towards resolving the economically damaging conflict (85). Indeed, Qatar cited the failure of negotiations and mediation as the primary reason for its application to the ICJ.³⁵ Thus, settlement failure determined the timing of litigation in the Hawar Islands case.

It must be mentioned that two other sets of variables exert some influence on proposals for the legal settlement of territorial disputes, independent of settlement failure. These are the broad, macro-level factors proposed by the existing literature, including democracy, capabilities, domestic legal systems, and past experiences, among others. The first set of characteristics, including democracy, operate at the state level, forming each state's unique "package" of potential policy options that they bring to the bargaining table in ongoing disputes. These packages define which policy alternatives a state prefers regardless of dispute context, along with which alternatives the state prefers to avoid. The

³⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Application Instituting Proceedings, International Court of Justice 1991, available at <http://www.icj-cij.org/files/case-related/87/7021.pdf>.

second set of factors operates as dispute dyad-level environmental conditions that alter how states approach the settlement process. These factors include past dispute experiences, alliances, and mutual international agreements, but the relative strength of legal claims to a given territory within a dyad makes states particularly more or less likely to propose litigation because ambiguous legal claims substantially increase the uncertainty associated with a potential legal decision. All of the aforementioned variables alter the bargaining calculus by providing states with information about their preferences and those of their opponents, and they generally vary only gradually over time. Significantly, policy packages and environmental conditions rarely provide satisfying explanations for the timing of the use of any particular settlement method in a dispute on their own. For example, both Qatar and Bahrain were non-democratic Islamic law states throughout the course of the Hawar Islands dispute, facts that the literature argues discourage international litigation (Wiegand 2012; Wiegand and Powell 2011; Powell 2015). Yet the dispute experienced litigation approved by both sides in 1996. Each time either of these states entered a round of bargaining, the norms and incentives associated with dispute resolution generated by these long-term factors created a particular environment with a particular propensity for litigation. But the disputants eventually agreed to take on the substantial risks of international adjudication because they urgently required the establishment of exclusive title and because no other non-legal method proved able to fulfill this need. The combination of economic opportunity costs and settlement failure effectively superseded the disputants' engrained preferences, even in the face of highly ambiguous legal arguments (Plant 2002). Therefore, I contend that the state-level policy packages and dispute-level environmental conditions determine the

norms and expectations that disputants will bring to the bargaining table, regardless of time. I treat these policy packages and environmental conditions as controls or alternative explanations for my analysis.

2.3 Geography, Law, Experience, and Settlement Failure

It is likely that the effects of settlement failure vary across disputes and disputants. Settlement failure provides all states with information regarding the existence of bargaining deadlock, but states with different attitudes towards legal settlement methods are likely to process this information differently. In this dissertation, I examine three factors that modify the effects of settlement failure: geography, legal arguments, and past experiences with the international judiciary. In what follows, I review my theoretical claims regarding these variables. I test these claims in subsequent chapters.

2.3.1 Geography

The geographic location of disputed territory changes how settlement failure operates in territorial disputes. The primary geographic distinction that I am concerned with is that between land-based territories (i.e. border, frontier, and river disputes) and offshore territories (i.e. island disputes).³⁶ Three logics suggest that offshore territorial disputes amplify the influence of settlement failure, leading to earlier litigation proposals. First, disputes over offshore islands and the delimitation of maritime zones often go hand in hand. This is evident in the Hawar Islands dispute, where sovereignty over the disputed

³⁶ Disputed regions lying on the main body of island states like Cuba do not fall into the offshore category (Hensel 2013).

islands influenced the maritime boundary between Qatar and Bahrain.³⁷ Maritime disputes have the potential to draw the interest of many states, some of which do not even claim the disputed area (Owsiak and Mitchell 2017). This complex environment creates problems of preference aggregation. In other words, the more states desirous of influencing the settlement process, the more difficult it is to satisfy each state with a single settlement procedure. The use of international courts and arbitral panels avoids this problem by placing control over the distribution of territory in the hands of an impartial third party. Yet this tactic is only feasible when some level of settlement failure indicates the existence of a bargaining impasse. Therefore, the effects of settlement failure are increased in disputes over offshore territories. Litigation proposals occur in response to less settlement failure in offshore disputes where it is advantageous to avoid the pitfalls of complex preference aggregation.

Moreover, offshore contentions are generally, at their core, disputes over property rights. Exclusive property rights are a vital prerequisite for resource extraction, particularly for seabed oil and gas deposits (Hensel and Mitchell 2005). In the absence of established property rights, resource extraction is difficult, if not impossible, due to uncertainty surrounding the future disposition of territory. Consequently, bargaining deadlock in offshore disputes creates substantial economic opportunity costs for all parties involved. Every minute spent maintaining an intractable dispute delays the accumulation of wealth from the disputed natural resources. For example, in the Hawar Islands claim, oil and gas resources near the disputed territory substantial economic

³⁷ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment (Merits), I.C.J. Reports 2001, 40, available at <http://www.icj-cij.org/files/case-related/87/087-20010316-JUD-01-00-EN.pdf>.

opportunity costs for both Bahrain and Qatar (Wiegand 2012, 89-91). Without a resolution, effective drilling and the accompanying revenues were unsustainable. As Wiegand (2012, 89) notes, “Bahrain’s and Qatar’s willingness to risk uncertainty in a legal and binding ruling...was predicated primarily on...expected significant economic gains due to secure access to oil and gas resources, only possible after the dispute was resolved.”³⁸ Thus, deadlock is a particularly effective incentive for litigation in offshore disputes. Adjudication and arbitration are immediate and readily available methods for breaking this kind of deadlock, at the cost of an unpredictable court ruling.

Simultaneously, international law is far clearer and more precise in maritime matters than in land-based sovereignty disputes (Powell 2018; Shaw 2014). Clear laws create legal focal points that facilitate policy coordination (Huth, Croco, and Appel 2013). Substantively, this means that having a clear legal disposition of territory makes the rulings of international tribunals less unpredictable while creating a “default” distribution of territory to which states may resort. In contrast, land-based disputes frequently involve more than purely economic interests (Hensel and Mitchell 2005). The land-based component of the Hawar Islands dispute, an area on the Qatari peninsula known as Zubarah, was valued, not for its admittedly minimal economic potential, but for its identity-based connotations.³⁹ This, along with Zubarah’s location on mainland Qatar, hindered attempts to mediate and eventually adjudicate the dispute (Wiegand 2012). My addition is to submit that these effects of geography are conditioned upon settlement

³⁸ Additionally, joint cooperation in other bilateral issue areas like joint gas pipelines and security arrangements was impossible while the dispute continued (Wiegand 2012, 92).

³⁹ *Maritime Delimitation* (note 37).

failure. Proposals for litigation are more likely in offshore disputes, but only when significant levels of settlement failure tell disputants that bargaining deadlock exists and is insurmountable. Figure 2.2 summarizes this argument. These theoretical claims are fleshed out and tested in Chapter 3.

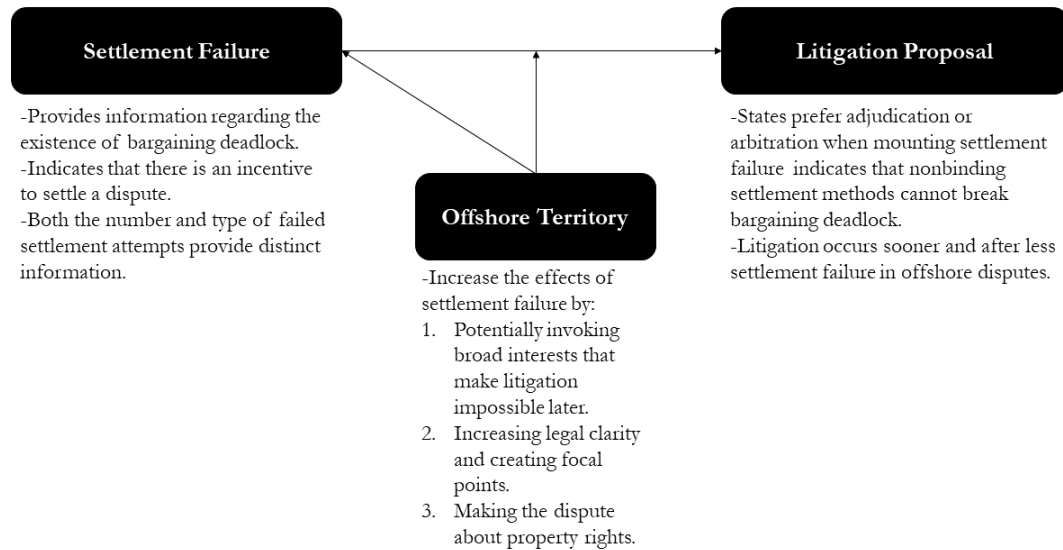


Figure 2.2: Theory of Geography, Settlement Failure, and Litigation Proposals in Territorial Disputes

2.3.2 Legal Arguments

The nature of the legal arguments involved in a territorial claim alter the effects of settlement failure in a similar, though distinctive way. Intuitively, one might argue that states with strong legal claims to a territory are likely to resort to litigation more readily than states with weak arguments. After all, a high probability of victory in court should incentivize proposals to litigate, particularly when settlement failure is high. Two factors complicate this theoretical model. First, international adjudication and arbitration rely on

consent, meaning that any serious proposal for litigation must contemplate the preferences of the opposing party. Litigation proposals to disinterested opponents are purely rhetorical. Second, the literature demonstrates that legal ambiguity, not base advantage, plays a decisive role in the peaceful settlement of territorial disputes (Huth, Croco, and Appel 2013). Legal arguments whose merits are clear and unambiguous create legal focal points in the form of a “baseline” distribution of territory supported by international law. Such a baseline facilitates bargaining by creating concrete, visible expectations regarding a mutually acceptable distribution of territory. Naturally, such focal points facilitate settlement out of court because clear expectations narrow the range of possible bargaining outcomes while reducing private information (Huth, Croco, and Appel 2013). However, I posit that states may resort to litigation as a means of obtaining exactly the baseline distribution of territory when settlement failure shows further nonbinding bargaining to be futile. In such cases, the clarity of the law renders adjudication or arbitration relatively predictable, mitigating the general uncertainty of resorting to legal settlement methods. Thus, at least when bargaining deadlock exists, legal focal points make litigation an attractive method for resolving costly disputes in a regular manner.

In the absence of clear legal arguments, policy coordination around litigation is much more difficult, even in the presence of settlement failure. Without legal focal points, states have no clear expectations regarding the default territorial distribution, and private information is substantial. In such cases, litigation remains the risky and unpredictable gamble portrayed by Mitchell and Powell (2011). Any number of distributions of territory may result from bargaining or a court ruling, many of which

could be detrimental to a state's long-term interests. Thus, in the presence of ambiguous legal arguments, states frequently resist litigation even when settlement failure is substantial. This logic implies that the effects of settlement failure are larger when clear legal arguments create a focal point and smaller when no such focal point exists. Figure 2.3 depicts this theory in graphical format. Chapter 4 discusses and analyzes this argument in full.

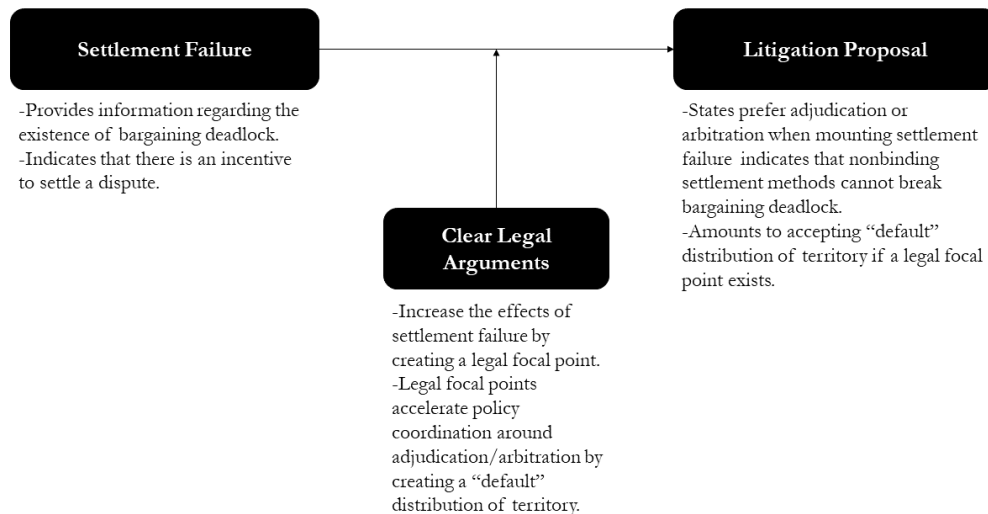


Figure 2.3: Theory of Settlement Failure, Legal Arguments, and Litigation Proposals in Territorial Disputes

2.3.3 Judicial Experience

Finally, past experiences with the international judiciary influence how states process the information provided by settlement failure. Findings from Powell and Wiegand (2014) and Wiegand and Powell (2011) indicate that states with positive win-loss records in international judicial institutions are likely to propose litigation again in

territorial disputes. States with negative records display a similarly negative attitude towards international courts and arbitral panels. To explain these trends, Powell and Wiegand (2014) assert that states grasp at any source of information regarding prospective court decisions, effectively conflating past success with future performance. I improve upon this line of argument by noting that past experiences interact with settlement failure to create preferences for litigation at specific points in time. To illustrate, the timing of Malaysia's adjudication of the Pulau Batu Puteh dispute with Singapore was a direct result of Malaysia's victory in the Pulau Sipadan/Pulau Ligitan case against Indonesia (Haller-Trost 1995). Malaysia cited "the positive outcome of arbitration by the ICJ on the dispute between Malaysia and Indonesia over Sipadan and Ligitan" as the primary motivation behind the decision to litigate the Pulau Batu Puteh dispute.⁴⁰ Bargaining deadlock was an important condition that drove Malaysia to bring this dispute to court, but the prior victory boosted the attractiveness of litigation even further. Figure 2.4 illustrates this argument. Chapter 5 examines this theoretical model comprehensively. The analysis introduces considerable complexity into the claims of the literature.

2.4 Conclusion

International courts and arbitral panels are highly effective, if understudied, methods for resolving interstate territorial conflict. Therefore, understanding the conditions under which litigation is likely to be preferred is of substantial importance,

⁴⁰ "Malaysia to focus on island dispute with Singapore, says deputy premier," Bernama News Agency, December 18, 2002.

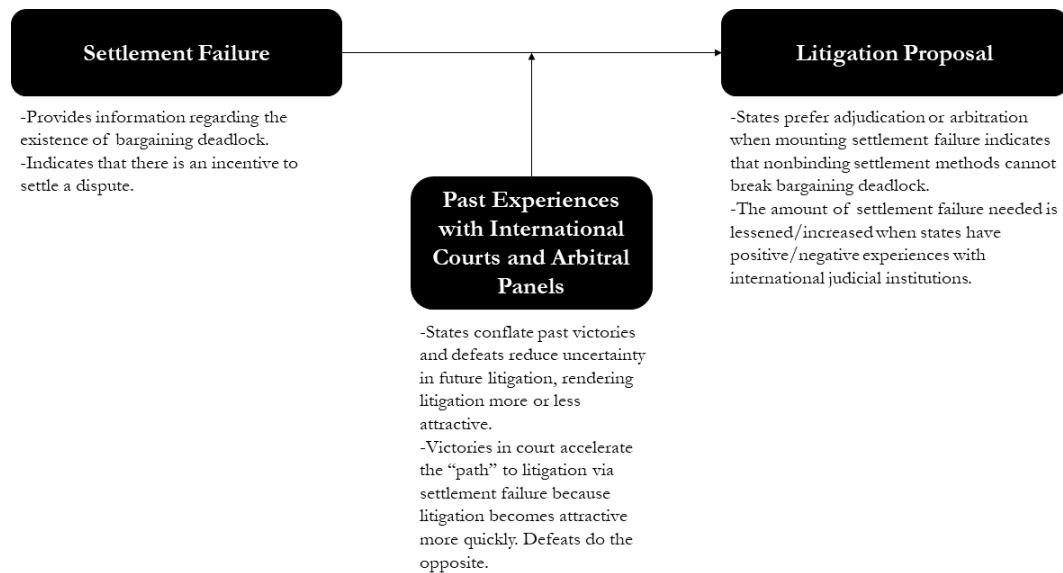


Figure 2.4: Theory of Settlement Failure, Judicial Experiences, and Litigation Proposals in Territorial Disputes

both for scholars of the peaceful settlement of territorial conflict and for policymakers seeking to settle or influence the settlement of ongoing territorial claims. I propose a comprehensive theory of territorial litigation that predicts, not only why states litigate their disputes over land, but also when they choose to do so. I theorize that time invariant variables combine with the dynamics of settlement failure to explain the timing of proposals for litigation. My focus on settlement failure allows me to account for both the timing of litigation proposals and the fact that most territorial disputes lie dormant for considerable periods of time before settlement attempts are made. Additionally, analyzing the influence of settlement failure, geography, the clarity of legal arguments, and past experiences alongside state- and dispute-level factors proposed by the literature, I am able to integrate my theory into prior theories of peaceful settlement in territorial conflict.

Having proposed my theory of the timing of territorial litigation, subsequent chapters will use data gathered on territorial conflict from 1945 to 2015 to test the various mechanisms advanced by my theoretical model. Chapter 3 explores the dynamics of settlement failure and litigation proposals, as moderated by geography. Chapter 4 examines how the clarity of legal arguments interacts with settlement failure to produce preferences for adjudication and arbitration. Chapter 5 tests the interaction between past experiences in judicial forums and settlement failure, with surprising results. Finally, Chapter 6 presents my conclusions, their relevance, and avenues for future research.

CHAPTER 3:

SETTLEMENT FAILURE, GEOGRAPHY, AND LITIGATION IN TERRITORIAL DISPUTES

3.1 Introduction

Territorial disputes remain a frequent cause of interstate conflict in the modern world. States rarely use adjudication and arbitration, but these methods, collectively known as litigation, represent highly effective ways of ending international disputes with minimal violence (Alter 2014; Johns 2015). Mitchell and Hensel (2007) find that, out of the 29 distinct territorial or maritime claims submitted to the International Court of Justice (ICJ) as of 2007, only one court decision was completely rejected by the disputants and three induced incomplete noncompliance that was eventually resolved by subsequent negotiations.⁴¹ Territorial disputes successfully resolved by the ICJ include the long-running Aouzou Strip dispute between Libya and Chad, itself the cause of a war between the two parties, and the Hawar Islands dispute between Qatar and Bahrain, a territorial and maritime dispute that nearly came to violence in 1986 (Ricciardi 1992;

⁴¹ Mitchell and Hensel (2007) cite a 1997 ICJ decision regarding the dispute over the Gabčíkovo-Nagymaros dam project between Hungary and Slovakia as the only case of full noncompliance with an ICJ territorial decision. Five ICJ rulings since 2007 have dealt with title to land. Of these, only one, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, experienced any form of noncompliance. “Colombia-Nicaragua Maritime Zone Dispute Leads to Heightened Bilateral Tensions,” *Janes Country Risk Daily Report* 20, no. 182, September 12, 2013.

Wiegand 2012).⁴² Arbitral panels have a smaller but similarly strong record of effectiveness, with arbitration resolving such conflict-ridden disputes as the Hanish Islands dispute between Yemen and Eritrea and the Rann of Kutch dispute between India and Pakistan (Lefebvre 1998; Wetter 1971).⁴³ Thus, states are sometimes willing to submit even volatile disputes to adjudication or arbitration.

Few scholars have sought to understand the causes behind the selection of binding legal settlement methods directly, preferring instead to study the causes of compliance with international legal decisions, the causes of violence in territorial disputes, or the causes of all peaceful settlement methods in tandem.⁴⁴ This focus has resulted in a relative dearth of knowledge regarding why states choose adjudication or arbitration specifically. It is known that past experiences in international courts, legal arguments, and the failure of prior settlement methods promote the use of litigation (Hensel et al 2008; Huth, Croco, and Appel 2013; Wiegand and Powell 2011).⁴⁵ However, many of these and other factors proposed by the quantitative literature take the form of broad, macro-level variables that rarely change over time. Thus, these factors are ill-equipped to predict when adjudication or arbitration are likely to happen within protracted territorial

⁴² *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment (Merits), I.C.J. Reports 2001, 40, available at <http://www.icj-cij.org/files/case-related/87/087-20010316-JUD-01-00-EN.pdf>; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment (Merits), I.C.J. Reports 1994, 6, available at <http://www.icj-cij.org/files/case-related/83/083-19940203-JUD-01-00-EN.pdf>.

⁴³ *Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)*, Arbitral Award, United Nations Reports of International Arbitral Awards 1998, Volume XXII, 209-332, available at http://legal.un.org/riaa/cases/vol_XXII/209-332.pdf.

⁴⁴ See, for example, Johns (2015), Powell (2015), Tir (2010), and Wiegand and Powell (2011).

⁴⁵ Allee and Huth (2006) and Simmons (2002) propose regime type as a decisive factor in state choices to litigate. Yet the record of this variable is mixed: Gent and Shannon (2011) and Wiegand and Powell (2011) find no such significant effect.

claims. Timing is important because preferences for litigation vary across countries and over time. Many existing theories explain the former. My contribution is to analyze the latter. Moreover, the high rates of compliance with the decisions of international courts and arbitral panels may be due to a selection problem. In other words, it is possible that states comply with international judicial decisions precisely because they are predisposed to comply by some aspect of the process by which a legal settlement forum is selected as a viable settlement option. If this is the case, then comprehending this selection process is necessary for understanding compliance.

In the context of territorial disputes, I propose a shift of focus from theorizing and measuring the incidence of the use of binding settlement methods in territorial disputes to their timing. Adjudication and arbitration in territorial matters is, to some extent, a gamble because states cannot predict with certainty how a third party will distribute disputed territory (Mitchell and Powell 2011). This gamble becomes more attractive as settlement failure, defined as the demonstrated inability of nonbinding settlement methods, violent and peaceful, to resolve a given dispute, increases over time (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). This change in the perceived utility of litigation occurs because international courts and arbitral panels are guaranteed to produce definitive, binding resolutions to costly and intractable disputes.

My work supplies three new insights into the processes that produce territorial litigation. First, I connect settlement failure to the information available to policymakers regarding the existence of bargaining deadlock. Rather than reducing private information and facilitating bargaining, the information provided by settlement failure reveals the presence of an intractable impasse that may only be broken by concession or the

delegation of decision control to an impartial third party (Fearon 1995). Second, while several analyses examine how the number of prior settlement attempts influences the probability of litigation, I show that the failure of diverse types of nonbinding settlement method also provides vital information to policymakers regarding the attractiveness of legal settlement methods, regardless of how many times different methods have been tried. Thus, my work treats settlement failure as a multidimensional concept, rather than as a single variable.

Third and finally, the most important insight in this chapter is that the information provided by settlement failure combines with the location of the disputed territory to explain the timing of proposals for adjudication and arbitration. Offshore territories frequently engage the interests of many parties beyond the original claimants. As the number of parties grows, preference aggregation becomes more difficult, impeding the settlement process (Owsiak and Mitchell 2017). Moreover, the clarity of the law of the sea creates legal focal points that facilitate litigation, and the economic nature of offshore disputes creates opportunity costs that incentivize quick resolutions in court. In other words, the effects of settlement failure are altered in offshore territorial disputes. My empirical findings bear this out, showing that litigation is most likely at the beginning of offshore disputes, immediately after one or two failed settlement attempts. The probability then decays over time as new preferences and political dynamics make obtaining an agreement to litigate nearly impossible.

In this chapter, I first define the territorial dispute and explain the choices states have when resolving such disagreements, emphasizing the role of international courts and arbitral panels. Second, I lay out my theory of the timing of litigation by proposing that

settlement failure provides information regarding the effectiveness of different settlement methods. Litigation becomes more attractive once nonbinding methods have failed, though the type of territory being disputed substantially alters the effects of this dynamic. Finally, I test my theory using newly collected data on litigation proposals in territorial disputes (1945-2012) by relying on hybrid techniques that allow me to isolate the effects of change in a variable over time.

3.2 Settlement Failure in Territorial Disputes

A territorial dispute is a disagreement between two or more states over title to land (Shaw 2014). States may disagree over who has the legal right to govern and dispose of a territory according to international law. A territorial dispute is triggered when two or more states formally advance competing legal claims to a region.⁴⁶ Such disputes are settled when these conflicting claims are resolved, whether by concession, compromise, or formal legal action. Importantly, while violent conflict over territorial claims is not uncommon, neither is settlement by peaceful means.⁴⁷ Indeed, since the advent of the International Court of Justice (ICJ) in 1946, and even since the initial use of international arbitration to resolve competing claims in the nineteenth century, legal settlement methods have proven to be highly effective, if somewhat rare, means of peacefully resolving territorial disputes.

⁴⁶ In the context of territorial disputes, competing legal claims are overlapping formal demands for recognition of sovereign authority, or “title,” to a disputed area (Hensel 2013; Shaw 2014). States usually issue such demands in the language of modern international law.

⁴⁷ Of the 372 territorial claims recorded by the Issue Correlates of War (ICOW) project, 1816-2001, 134, or 35%, ended in violence (Hensel 2001). The remaining 216 (65 percent) ended either via peaceful means or by one or more states dropping the territorial claim altogether.

However, the mere existence of a legal dispute over rights to a territory does not lead to settlement activity, peaceful or otherwise. Territorial disputes frequently remain dormant for extended periods of time because states with competing claims often make no attempt to resolve their disagreement. Consider that no attempt was made to resolve the Hawar Islands dispute between Bahrain and Qatar until 1976, years after the territory in question formally came into dispute (Wiegand 2012). The reasons behind this standstill are simple: pressing a territorial or maritime claim is a costly and risky endeavor for states to pursue. Territorial disputes are likely to disrupt good relations between opposing states that are normally partners in trade and international cooperation due to geographic proximity (Simmons 2005). Furthermore, pressing a territorial claim can involve the use of military forces to maintain a visible presence in the disputed area. This presence risks violent escalation and may be costly for smaller states to maintain (Duffy Toft 2014; Senese and Vasquez 2008). Finally, active involvement in a territorial dispute always risks losing the disputed region to an opponent, an event that can have significant domestic audience costs (Allee and Huth 2006; Tir 2010). Unless the benefit to pursuing and winning a territorial dispute is clear and substantial, it is unlikely that a state will engage in any form of settlement activity.

When states decide to seek a solution for a territorial dispute, they can use a variety of methods. Peace and conflict are both constitutive elements of the settlement of international disputes. While coercive annexation is illegal under modern international law, force is still frequently used by states seeking to gain sovereignty over land (Duffy Toft 2014). Empirically, this reality is measured by Militarized Interstate Disputes (MIDs). MIDs involve displays of, threats of, or the actual use of force among claimants

(Sarkees and Wayman 2010). In territorial disputes, militarized violence, or the threat thereof, signify attempts to force an opponent to concede title to the disputed area.

Peaceful settlement methods fall into three categories, distinguished by the procedure with which a settlement is pursued and by whether the potential settlement is binding under international law (von Glahn and Taulbee 2013). Bilateral negotiations are the most common peaceful settlement method. Negotiations happen when formally authorized representatives of opposing states meet to discuss potential solutions to an ongoing dispute in an informal, nonbinding framework. Non-binding third party methods such as mediation, conciliation, and inquiry rely on help from a third party, usually but not necessarily a state, to facilitate discussion between disputants. In some cases, the third party offers solutions to the dispute at hand (Cassese 2005; Shaw 2014). However, in these methods, the decision of the third party is not binding, meaning that said decision may be rejected by one or more disputants without fear of international legal sanction.⁴⁸

Finally, binding third party methods, including adjudication and arbitration, allow a judicial third party to render a legally binding decision in a dispute.⁴⁹ These settlement methods both begin with the submission of a territorial dispute to a panel of judges that is charged with distributing the disputed territory using principles of international law (Shaw 2014; von Glahn and Taulbee 2013). In adjudication, the submission is made to a

⁴⁸ Importantly, the “sanctions” referred to here are hardly regular, given the lack of a global regime tasked with enforcing international law (O’Connell 2008). However, states may attempt to enforce international legal decisions on their own in the form of economic sanctions and reputational costs (Johns 2012; 2015).

⁴⁹ Functionally, adjudication involves the submission of a case to a permanent international court, while arbitration involves creating an *ad hoc* panel of judges nominated by the disputants for the sole purpose of rendering a binding legal decision (Shaw 2014). In territorial disputes, the principles of law and procedures applied by both international courts and arbitral panels are similar enough to be considered in tandem, though arbitration is much rarer than adjudication in practice (Wiegand and Powell 2011).

permanent international court like the ICJ.⁵⁰ In arbitration, the disputants convene an ad hoc panel of judges charged with ruling only on the dispute at hand. For both methods, states must first establish that the judicial third party has the jurisdiction necessary to rule on the dispute.⁵¹ Then, formal legal proceedings commence, including verbal and written arguments. Finally, the panel of judges renders a binding legal decision regarding the proper distribution of territory according to international law.⁵² Such formal dispute settlement methods, though rare, are extremely effective at resolving territorial disputes, and uncovering the reasons behind their use is the primary aim of this work (Mitchell and Hensel 2007).

Their effectiveness notwithstanding, the use of binding settlement methods involves a potentially costly gamble. As Mitchell and Powell (2011, 73-74) note, it is difficult, if not impossible, to predict the ruling of an international court or arbitral panel with perfect accuracy. Even with access to legal counsel and prior knowledge of the relative strengths of competing legal claims, states cannot be certain that a case submitted to adjudication or arbitration will be decided in their favor. Failing to predict an unfavorable ruling can result in the loss of most or all of the disputed region, an event

⁵⁰ The ICJ is the only permanent international court in existence that is routinely charged with deciding territorial disputes. For more information on the Court's activities, see <http://www.icj-cij.org/>.

⁵¹ The ICJ may establish jurisdiction by the negotiated agreement of the disputants, by the inclusion of a compromissory clause in a relevant treaty, or by both states signing on to the Optional Clause included in Art. 36(2) of the ICJ Statute (von Glahn and Taulbee 2013). If states disagree over whether the ICJ holds jurisdiction in a case, preliminary objections may be filed that must be considered and ruled upon by the ICJ itself. Arbitral panels may only establish jurisdiction by an ad hoc agreement, called a *compromis*, that is negotiated and approved by the disputants.

⁵² An international judicial decision is binding in that compliance is required by international law and sanctions may be applied to states that refuse abide by the ruling (Cassese 2005; Shaw 2014). The binding nature of international legal decisions is independent from enforcement.

that can be costly in terms of lost economic value and domestic legitimacy. Furthermore, a decision rendered by an international judicial body is legally binding, meaning that it is final and noncompliance is punishable by sanction (Cassese 2005; Shaw 2014). Of course, the lack of an enforcement mechanism like that of domestic courts weakens the force of binding third party decisions considerably. However, voluntary international sanctions associated with noncompliance can create considerable costs for noncompliance, and noncompliance remains a remarkably rare phenomenon.⁵³ This uncertainty, coupled with the potentially high costs of losing, accounts for the fact that international adjudication and arbitration entail a relatively high stakes gamble that may be only partially mitigated by increases in information (Powell and Wiegand 2014). This uncertainty is avoided when bilateral negotiations and nonbinding third party settlement methods are used because states using such methods are free to reject potential settlements or to leave the settlement process. Furthermore, there are no consequences other than the failure to resolve the core disagreement over title to land. The puzzle, then, is why states ever prefer the highly uncertain mechanisms of adjudication and arbitration over more certain, nonbinding settlement methods like negotiations or mediation.

3.2.1 Settlement Failure as Information

I argue that the solution to this puzzle lies partly in the concept of settlement failure. I define settlement failure as the demonstrated inability of nonbinding settlement methods, violent or peaceful, to resolve a given territorial dispute. Other scholars have analyzed the effects of settlement failure on the likelihood of litigation, in part (Lefler

⁵³ For a discussion of this, see note 48.

2015; Gent and Shannon 2011; Hensel et al. 2008). My contribution is to conceive of settlement failure primarily as a vehicle for information. Settlement failure provides states with information regarding the existence of intractable bargaining deadlock. It does so by demonstrating that some settlement procedure like negotiations, mediation, or escalation has visibly failed to resolve a claim due to some characteristic of the dispute or disputants. Because of the risks associated with litigation, states are unlikely to attempt it unless they have compelling evidence that a dispute is deadlocked with no hope of a nonbinding resolution. However, when deadlock exists, delegating the distribution of territory to an impartial third party is one of the only ways to end a territorial disagreement. Given the economic, security, and opportunity costs of maintaining a territorial claim, states are much more likely to resort to adjudication or arbitration when information regarding the presence of deadlock is plentiful.⁵⁴

To illustrate further, when there is no settlement activity and when no previously attempted nonbinding settlement method has ended in deadlock, states have little, if any, information regarding the potential effectiveness of different types of settlement activity. Therefore, at the beginning of a dispute, states generally choose non-binding methods or violent methods to settle territorial disputes because of the certainty they offer, at least in terms of decision control. States prefer not to lose control over the resolution of a dispute to a third party whose binding decision is difficult to predict (Gent and Shannon 2011).

⁵⁴ Empirically, catalysts like the discovery of natural resources in a disputed territory are not significant or substantial predictors of the timing of litigation. This is because an increase in the perceived value of territory only incentivizes doing something, rather than nothing, to resolve a claim. As in the Hawar Islands case, the Aouzou Strip dispute between Libya and Chad, and others, litigation often occurs years or even decades after a salience increase (Ricciardi 1992; Wiegand 2012). To get at the timing of litigation proposals specifically, one must consider settlement failure and the evolution of information over time after a dispute is catalyzed.

Additionally, nonbinding settlement methods allow for compromise based on bargaining leverage and other political variables (Wiegand 2011). However, the nonbinding third party methods frequently become deadlocked for the same reasons: relative levels of bargaining leverage may be uncertain, and assets involved in disputes over title to land may be difficult to divide in a mutually agreeable fashion.⁵⁵ In these circumstances, four choices are available to disputants. First, they may continue to pursue whatever nonbinding settlement processes are already in place, hoping that some maneuver or change in the status quo will alleviate the deadlock. Once a settlement method fails to solve the contention and as the amount of failed settlement activity mounts, states start viewing the method as increasingly unattractive because the ineffectiveness of “trying again” becomes clear. Second, states may choose a different nonbinding settlement method. This alternative might involve seeking an outside mediator after the failure of negotiations, or it could comprise military escalation. This option becomes unattractive when multiple different settlement methods fail and political factors such as bargaining leverage and power have proven indecisive in the past. Third, states may simply stop pursuing the territorial claim or cease trying to settle it. This option is usually unlikely, particularly for highly valuable territories with a long history of settlement attempts.⁵⁶ Finally, states may choose to adjudicate or arbitrate. Both of these formal methods

⁵⁵ Because levels of bargaining leverage are private information, Huth, Croco, and Appel (2013, 92) note that states also have an incentive to misrepresent their leverage for the sake of holding out for better terms. This incentive can impede bargaining substantially by making policy coordination difficult.

⁵⁶ Many disputes have ended with one or more states dropping a claim altogether (Hensel 2001). This often occurs in response to some shock like a failed military confrontation, bargaining to attain some other end, or domestic political upheaval. Thus, in disputes with long histories of settlement failure, abdication is unlikely, but not impossible.

produce a binding decision that distributes the disputed areas among the disputants. The decision is rendered by an independent but unpredictable judicial third party. These methods become most desirable when the record of settlement failure in the context of a dispute, including the amount of prior settlement activity and the types of failed settlement method attempted, provides compelling evidence for the existence of bargaining deadlock and the ineffectiveness of nonbinding dispute resolution.

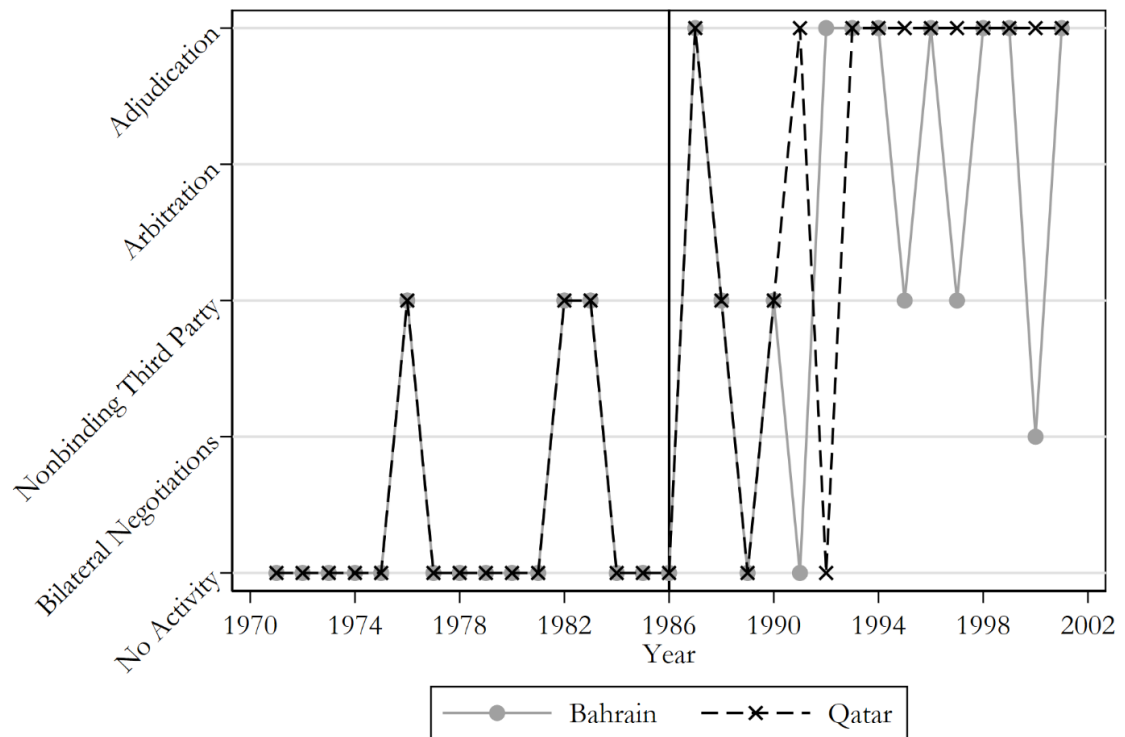
Consider a hypothetical dispute between two states, A and B, that lasts for 20 years. If during those 20 years no settlement activity takes place, then litigation remains relatively unlikely at all time points because neither A nor B shows any desire to resolve the claim and no information is available regarding whether the dispute can be settled by low-cost, low-risk nonbinding means. If settlement activity occurs within 10 of the 20 years, litigation becomes much more likely after those ten active years precisely because there is ample information that a settlement is desired but that some obstruction exists that can only be resolved by formal, legal dispute resolution. Importantly, the simple passage of time does not necessarily alter the incentives for litigation facing disputants. This is because a year in which no settlement activity takes place provides the disputants with no information regarding the effectiveness of different settlement methods. Only the amount of time that the disputants have spent trying to settle a dispute actively with no decisive results is relevant for the probability of litigation proposals. In any case, the available evidence for deadlock is reinforced as the amount of failed settlement activity increases over time because settlement failure indicates entrenched difficulties that cannot be worked out by purely political means. In this way, litigation becomes attractive as a potential “tiebreaker” in the deadlocked dispute.

Thus, the information available to states regarding the effectiveness of nonbinding settlement methods and the corresponding attractiveness of litigation evolves over time. Rising certainty regarding the existence of intractable deadlock leads to preferences for litigation as a means of breaking the impasse. This theory contradicts scholars arguing that increases in information should facilitate bargaining by reducing private information and misrepresentation of preferences and capabilities (Fearon 1995). But not all information is good information. Iterated rounds of bargaining may very well reveal private information and uncover misrepresentations of a state's resolve and power. But making private information public may only disclose non-overlapping bargaining ranges and a complicated dispute environment that resists peaceful settlement. For example, multiple rounds of inconclusive negotiations might make known a single issue upon which no disputant is willing to compromise. This hardly improves the prospects of bargaining, though it does increase the available information. Attempting mediation in this context may only highlight this intractable issue. In other words, mounting settlement failure over time is more likely to expose an insurmountable impasse than a mutually agreeable distribution of territory. One might object that the revelation of a bargaining impasse might make state less, rather than more likely to propose litigation. After all, if the disputants' bargaining ranges do not overlap, why would they settle for a territorial distribution assigned by the international judiciary? The answer lies in the choices states face under conditions of settlement failure. When settlement failure is high, the information available to states suggests that nonbinding bargaining is ineffective and inefficient. Militarized escalation is always risky, likely to be opposed by other states, and may already have been tried. Conceding the territory is possible, but unlikely given

the unique value of territory and the costs of its loss. Refusing to act in any way is also conceivable, but maintaining intractable territorial disputes can be a costly endeavor. Consequently, when the information provided by settlement failure reveals an impasse, states are likely to settle for the least risky option. Adjudication or arbitration can break the deadlock, end the costs of an ongoing dispute, circumvent the risks of escalation, and provide some hope that some of the disputed territory will be retained.

Figure 3.1 demonstrates the dynamics of settlement failure in the Hawar Islands dispute, adjudicated by the ICJ in 2001. Although its antecedents lie further in the past, the formal dispute began in 1971, when both Bahrain and Qatar gained independence (Wiegand 2012). No settlement activity occurred until 1976, when Saudi Arabia intervened as a mediator upon the discovery of oil and gas resources in the disputed area. The mediation resulted in a dispute resolution framework, known as the Principles for the Framework on Reaching a Settlement, agreed upon in mediated talks between 1982 and 1983.⁵⁷ The Principles included the stipulation that the case be submitted to the ICJ if further negotiations failed. Subsequent talks were unsuccessful, primarily because neither side could agree on what precisely the dispute was about. Bahrain desired to discuss and, if necessary, adjudicate ownership of Zubarah, a tract of land on the northwestern coast of the Qatari peninsula. Qatar wanted to exclude Zubarah from the dispute and focus instead on the Hawar Islands and their maritime implications. In terms of my argument, settlement attempts from 1982 onward showed Bahrain and Qatar that bargaining deadlock existed because of disagreements over the scope of the dispute. Rather than

⁵⁷ Both disputants chose to wait for confirmation of the oil and gas deposits in the disputed area before agreeing to the framework (Wiegand 2012).



*Vertical reference line denotes MID in 1986.

Figure 3.1: Settlement Activity in the Hawar Islands/Zubarah Territorial Dispute (Bahrain vs. Qatar), 1971-2001

unveiling some mutually agreeable bargaining space, the information provided by settlement failure in the Hawar Islands case told policymakers on both sides than an impasse existed and was quite robust.

A violent clash between the disputants in 1986 further highlighted the need for binding dispute resolution in light of the clear ineffectiveness of nonbinding settlement methods (Wiegand 2012, 83-83). Both sides agreed, in principle, to ICJ adjudication in 1987. Almost immediately, more disagreements over the extent of the territory in dispute brought about two more rounds of Saudi mediation in 1988 and 1990, the latter of which

resulted in an agreement to continue negotiations until May 14, 1991.⁵⁸ After this deadline passed without a nonbinding settlement, Qatar, citing settlement failure as justification, submitted the dispute to the ICJ. Therefore, multiple rounds of unsuccessful mediation and a violent incident indicated to Qatar and Bahrain that bargaining deadlock existed and was robust to multiple settlement methods. In response to settlement failure, Qatar seized upon a prior agreement and submitted the dispute for adjudication, a risky process that could nonetheless break the deadlock, assign property rights, and restore good relations with a vital trade partner. Thus, settlement failure led to litigation from 1991 onward.

Therefore, in the above case, settlement failure provided information to policymakers regarding the existence of bargaining deadlock.⁶⁰ Litigation broke the deadlock by delegating responsibility for the distribution of territory to a judicial third party, thus avoiding the political contentions that made nonbinding settlement methods ineffectual. While the use of settlement failure to explain litigation is not entirely novel, connecting settlement failure to the information available to policymakers is. Moreover, as is discussed below, my empirical approach towards measuring settlement failure innovates by treating this variable as a multidimensional concept.⁶¹ Both the number and type of prior settlement attempts conditions the attractiveness of litigation. In the Hawar

⁵⁸ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Application Instituting Proceedings, International Court of Justice 1991, available at <http://www.icj-cij.org/files/case-related/87/7021.pdf>.

⁶⁰ This dynamic may be observed in a number of other cases, including but not limited to the Hanish Islands dispute between Yemen and Eritrea, the Aouzou Strip dispute between Libya and Chad, and the Bakassi Peninsula dispute between Nigeria and Cameroon. Moreover, my quantitative analysis demonstrates the applicability of my logic across a large number of territorial contentions.

⁶¹ See 63-65 for more on this approach.

Islands dispute, a militarized clash, mediation by multiple third parties, and bilateral talks all failed to resolve the disagreement, indicating that no nonbinding procedure could break the deadlock, regardless of the number of prior settlement attempts (Wiegand 2012). To capture the full effect of settlement failure on the likelihood of proposals for litigation, one must consider both the number and type of failed settlement attempts experienced by territorial disputants.

3.2.2 Offshore Territories and Settlement Failure

Settlement failure operates differently in disputes over offshore territories. I define an offshore territory as any disputed territory that consists entirely of islands.⁶² Land-based border disputes and disputes over river islands do not fall into the offshore category. Disputed offshore territories are frequently tied up in broader questions of maritime delimitation. For instance, in the Hawar Islands dispute, ownership of the disputed islands mattered greatly for determining the location of the maritime boundary between Qatar and Bahrain.⁶³ As Owsiak and Mitchell (2017) contend, maritime disputes with island components frequently engage the interests of many states. Some of these states may not even claim the islands in dispute, caring only about the disposition of the maritime boundary. These circumstances create a dispute environment filled with conflicting preferences that are difficult to reconcile. To minimize the transaction and opportunity costs of aggregating myriad state preferences over time, Owsiak and Mitchell argue that states are quicker to place control over the resolution of island disputes in the

⁶² This excludes disputed territories that lie on the main body of the territory of island states like Cuba (Hensel 2013).

⁶³ *Maritime Delimitation* (note 42).

hands of judicial third parties. In contrast, land-based territorial disputes involve fewer parties with narrower interests, reducing the probability of bargaining deadlock.

Additionally, questions of maritime delimitation are usually highly technical and governed by well-established laws (Powell 2018; Shaw 2014).⁶⁴ Regarding the technical nature of maritime delimitation, consider the ICJ's efforts to delimit the Qatar-Bahrain maritime border in the Hawar Islands case. The legal decision first established title to the disputed territories, then drew an equidistant boundary between the two states predicated on a territorial baseline that the court itself had to delimit.⁶⁵ The process included discussions of tidal elevation, the breadth of various zones of control, and several objections from both states regarding extraordinary circumstances that might justify the shifting of the boundary line. Legal and scientific experts are well-equipped to resolve these kinds of puzzles. Policymakers frequently are not. Furthermore, maritime issues with territorial components are governed by comprehensive instruments of international maritime law such as the UN Convention on the Law of the Sea (UNCLOS), in addition to classical principles of territorial sovereignty.⁶⁶ State commitments to UNCLOS and some other treaties explicitly allow states to resort to courts or arbitral panels in cases

⁶⁴ The ever-increasing legalization of international maritime law developed in response to the discovery of natural resources located on or underneath the seabed (Shaw 2014, 402-403). State interests in extracting these resources while protecting freedom of navigation led to four Conventions on the Law of the Sea in 1958 and the sweeping United Nations Convention on the Law of the Sea (UNCLOS) in 1982.

⁶⁵ *Maritime Delimitation* (note 42).

⁶⁶ For summations of these classical principles, see Jennings (1963) and Shaw (2014, 354-376). For more on UNCLOS, see http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

where nonbinding settlement methods have failed.⁶⁷ The degree of legalization and institutionalization of maritime law creates legal focal points that may not exist in land-based disputes (Huth, Croco, and Appel 2013). Simply put, this helps states to coordinate policy around formal dispute settlement venues in the presence of bargaining deadlock.

Finally, island territories are generally valued for their geographic position and corresponding maritime rights, rather than for ethnic or identity-based attachments. This suggests that the end goal of offshore disputes is establishing property rights for resource extraction and that bargaining deadlock comes with substantial economic opportunity costs. Hensel and Mitchell (2005) show that territories with greater intangible salience, or ethnic, historical, or identity-based value, create longer and more violent disputes. This relationship exists because such territories are difficult to divide up to the satisfaction of all disputants and because the economic costs of maintaining such disputes may be low in the absence of violence. In contrast, when a territory is valued only for its position near maritime resources, there is a substantial opportunity cost for maintaining a dispute. As in the Hawar Islands dispute, economic exploration, extraction, and cooperation in maritime regions is impossible without established property rights. In the absence of such rights, exploitation is difficult because states and companies tasked with gathering natural resources cannot be certain who owns the rights to the resources in question. International courts and arbitral panels are effective at establishing property rights according to international law. Thus, states have an incentive to resort to litigation in offshore disputes

⁶⁷ Article 284 of UNCLOS strongly recommends the use of conciliation before adjudication or arbitration.

when bargaining deadlock exists.⁶⁸ This incentive does not exist in onshore disputes that involve more than just economic concerns. Once again, the Hawar Islands case serves as a useful example. While the disputed islands themselves had some value, the true advantage of title to the islands lay in maritime rights and previously discovered offshore oil deposits (Wiegand 2012). Litigation eventually occurred in the dispute partially because uncertain property rights impeded cooperative efforts between Qatar and Bahrain to extract resources from said deposits. This represented an ongoing opportunity cost that neither state had an interest in sustaining, and litigation ensued.

I build upon the existing literature by theorizing that settlement failure in offshore territorial disputes creates an environment uniquely suited for litigation. It is not simply that offshore disputes incentivize adjudication and arbitration as such. Rather, states also respond to the information provided by settlement failure differently when offshore territories are at stake. Offshore territories change the effects of settlement failure for two reasons. First, the failure of new nonbinding methods and mounting settlement failure over time indicates that conflicting preferences exist among disputants. The broad interests that offshore disputes can entail, along with the economic opportunity costs associated with maintaining such disputes, mean that states will seek litigation rather quickly to avoid protracted deadlock. In contrast, the narrower interests engaged by land-based disputes mean that fewer parties have an interest in the final distribution of territory and that bargaining is simpler. Moreover, many land-based disputes arise from the ethnic,

⁶⁸ Interestingly, Ásgeirsdóttir and Steinwand (2015) find that poorer states are less likely to litigate and more likely to prefer bilateral negotiations in maritime claims due to the prohibitive cost of maintaining a court case.

historical, or identity-based value of the territory, in addition to economic value. Thus, the economic opportunity costs of maintaining a land-based territorial claim can be lower if a territory is desired mostly for its ideological value. This incentivizes deadlock as states hold out for a better distribution of territory. Thus, in land-based disputes, attempting a new nonbinding settlement method without result means less for determining the likelihood of litigation. UNCLOS also facilitates litigation in some disputes by automatically establishing the jurisdiction of international courts or arbitral panels in the event of bargaining deadlock. Here, the jurisdiction of an international court or arbitral award is already established, and cases may be submitted unilaterally by disputants. This allows litigation to take place more quickly than if negotiations were required to establish a court's jurisdiction. Otherwise, the legal certitude that UNCLOS provides creates legal focal points around which states may coordinate policy (Huth, Croco, and Appel 2013). In the presence of clear legal arguments, the potential for third party interference, and economic opportunity costs, settlement failure accelerates the bargaining process towards litigation as a fair, predictable means of establishing property rights.

Figure 3.2 summarizes my theoretical claims, which suggest the following hypothesis:

Hypothesis 1: The effects of settlement failure on the probability of litigation are larger in disputes over offshore territories than they are in disputes over onshore territories.

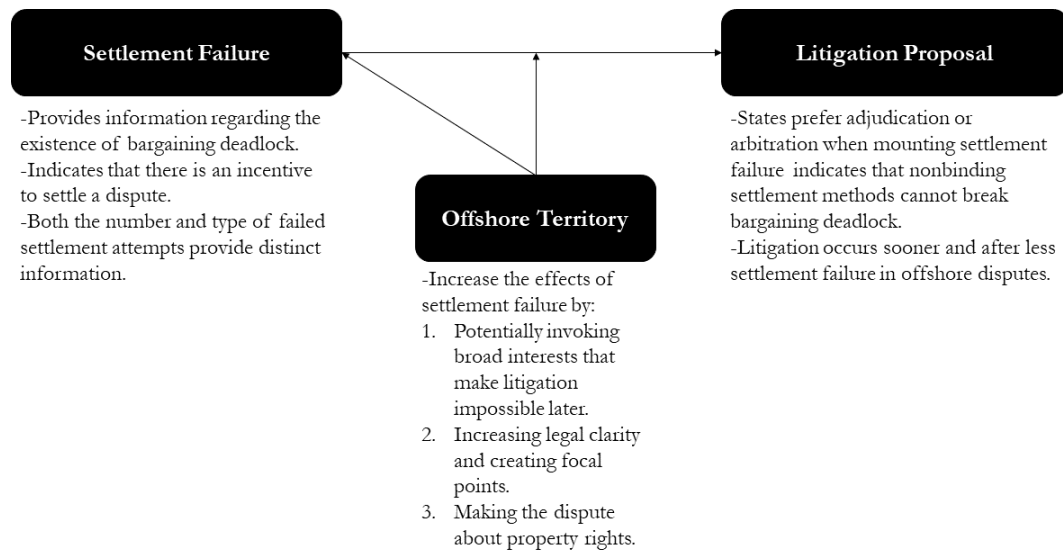


Figure 3.2: Theory of Settlement Failure, Geography, and Litigation Proposals in Territorial Disputes

3.3 Research Design

To test these my theoretical claims, I rely on a sample of interstate territorial disputes covering 181 distinct territorial claim dyads from 1945 to 2012.⁶⁹ The unit of analysis is the claim-dyad-year, meaning that there is one observation in my dataset for each year that a pair of states is involved in a claim. To capture the effects of change over time, a claim dyad enters my dataset when authorized representatives of a state explicitly claim a geographic area that is also claimed by at least one other state (Hensel 2013). No settlement activity is necessary for inclusion. This coding of disputes follows that used by the Issue Correlates of War (ICOW) project (Hensel 2001).

⁶⁹ Some of my analyses rely on ICOW data that restricts the sample to 1945-2001.

My dependent variable, *Litigation Proposal*, is a binary variable coded 1 if authorized representatives of at least one state in a claim dyad express a preference for using either arbitration or adjudication to resolve the territorial or maritime claim and 0 if not.⁷⁰ Thus, a positive case of *Litigation Proposal* does not necessarily mean that a state has initiated litigation or that both dyad members have submitted a claim to a court or arbitral panel. Rather, it means that at least one state has indicated that it favors litigation, either by proposing it as a potential settlement alternative or by acting to bring litigation about. This design allows me to capture variation in preferences over time while including both successful and unsuccessful proposals for litigation. Data for this variable was based on the dataset used by Wiegand and Powell (2011), newly updated to 2015 and improved with the addition of a few new claims suggested by the ICOW dataset (Hensel 2001).⁷¹ However, the sample used in my analysis is truncated by my use of other ICOW variables that are limited to the year 2001 and before.

Five independent variables measure settlement failure: *Prior Peaceful Settlement Attempts*, *Prior MIDs*, *Negotiations Attempted*, *Nonbinding Third Party Attempted*, and *MID Attempted*. *Prior Peaceful Settlement Attempts* is a count variable equal to the number of prior claim-dyad-years in which any form of peaceful settlement activity was attempted by any dyad member. *Prior MIDs* is a similar count variable equal to the number of prior claim-dyad-years in which a MID was attempted by any dyad member.

⁷⁰ Several different data structures were considered, including a claim-state-year format. However, model testing revealed that there was no empirical benefit to separating states out from their claim dyads, since most of the group-level variation in my outcome of interest occurred at the claim dyad level.

⁷¹ The resources employed for this updating effort included publications by the International Boundary Research Unit (IBRU), court judgments, arbitral awards, and newspaper articles drawn from the LexisNexis database.

These variables allow me to test the effects of mounting levels of settlement failure over time. *Negotiations Attempted* is a dichotomous variable, coded 1 if dyad members have attempted bilateral negotiations at any prior point in a given dispute and 0 if else. *Nonbinding Third Party Attempted* is similarly dichotomous, coded 1 if dyad members have attempted any nonbinding third party settlement methods such as mediation or conciliation at any prior point in a dispute and 0 if else. Finally, *MID Attempted* is a dichotomous variable coded 1 if a militarized interstate dispute has taken place between dyad members at any prior point in a dispute and 0 if not.⁷² This measurement design was employed to encapsulate all salient dimensions of settlement failure. The effects of these variables on the probability of litigation proposals should be positive, as significant amounts of settlement failure make litigation attractive as a potential “tiebreaker” in an otherwise deadlocked dispute.

This approach to measuring settlement failure is substantially different from Lefler (2015), Hensel et al. (2008), and others. These studies measure settlement failure as involving only failed settlement attempts occurring in the past five or ten years, with a decay function applied to weight the information provided by individual attempts according to age.⁷³ Some studies also disaggregate successful peaceful settlement attempts that produce an intermediate agreement on an issue from unsuccessful attempts (Gent and Shannon 2011). To an extent, these choices were necessitated by the structure

⁷² I include no variable for past wars for two reasons. First, all wars are also counted as MIDs, meaning that the two are highly correlated. Second, the small number of wars in my sample makes inference on such a coefficient difficult.

⁷³ In Hensel et al. (2008, 131), prior settlement attempts are weighted 10 percent less for each year prior that they occurred. For instance, an attempt that occurred 10 years prior to the current year contributes a value of .1, and any attempts more than ten years before are dropped from the equation entirely.

of available data. My use of panel data, rather than attempt-level data, allows me to use a more comprehensive approach to past settlement activity.

My work provides new methodological insights to the literature in several other ways. First, I do not assign a decay function to prior settlement attempts. Thus, I remove an element of arbitrariness that may or may not accurately reflect how policymakers internalize information from settlement failure.⁷⁴ Indeed, it is unclear why one should assume that policymakers simply forget about settlement attempts that occurred more than five or ten years ago. It is also not established that policymakers weigh earlier settlement attempts differently than more recent ones according to a regular interval. Furthermore, by operationalizing settlement failure as prior years of activity, I can better assess settlement failure's effect on the timing of litigation by comparing the effect of active years to that of time in general. Additionally, my dichotomous measures of settlement failure allow me to accurately represent the information available to policymakers in each year. For example, policymakers in the Hawar Islands dispute knew that mediation and violent settlement methods had failed by 1987, in addition to the number of rounds of failed prior settlement activity (Wiegand 2012). Policymakers consider both how long settlement activity has proceeded and which methods have failed in the past before deciding on what methods to attempt in the current year. By slightly complicating my measurement strategy, I refine those that are used in prior studies of litigation and settlement failure. Data for prior violent settlement attempts was taken from

⁷⁴ See note 73 for an example of these decay functions. Essentially, my analysis removes the assumption that political memory of past settlement attempts decays at a regular rate. This eliminates potential bias from treating two disputes as identical, even though one has ten prior settlement attempts in the past decade and the other has 20, ten for the decade and ten before that. The latter is clearly more intractable than the former, but the decay function deployed by Hensel et al. (2008) ignores the distinction.

the ICOW project's provisional dataset (Hensel 2001). Data for prior peaceful settlement attempts was taken from the newly updated version of Wiegand and Powell (2011).

To test my theorized interaction between settlement failure and offshore territories, I employ one variable drawn from the ICOW dataset (Hensel 2001). *Offshore* is dichotomous, coded 1 if the disputed territory is located entirely offshore from both members of a claim dyad and 0 if not. This includes small islands and other features connected to maritime delimitation disputes and excludes border disputes, lake and river disputes, and multifaceted claims with both onshore and offshore components (Hensel 2013). To limit model complexity and avoid problems of multicollinearity, I interact this variable with two aggregated measures of settlement failure, *Prior Attempts* and *Prior Types*. *Prior Attempts* is continuous and equal to the number of prior active settlement years, violent or peaceful, that a claim dyad has experienced. *Prior Types* is a count variable, ranging from 0 to 3, that is equal to the number of prior types of dispute settlement method that have been attempted in a claim dyad, including bilateral negotiations, nonbinding third party methods, and MIDs. As with my other measures of settlement failure, data for these variables is derived from the updated version of Wiegand and Powell (2011) and the ICOW project's provisional dataset (Hensel 2001).

I include several control variables suggested by the literature. In the models without interaction terms, two measures derived from the ICOW dataset control for the salience of territory to disputants (Hensel 2001). *Tangible Salience* is a variable ranging 0-6 that measures the material and physical value of territory to dyad members, including the territory's resource basis, strategic value, and population. *Intangible Salience* is a similar, 0-6 variable measuring ideological dimensions of a territory's value, including

whether the territory forms part of either dyad member's identity, whether the territory is claimed as a homeland by either dyad member, and whether either dyad member has exercised sovereignty over the territory in the past. *Joint Democracy* measures the extent to which dyad members may be considered democratic. This variable is dichotomous, coded 1 if both dyad members' Polity IV scores are 6 or greater and 0 if else (Marshall and Jaggers 2011, v. 2015).⁷⁵ The literature contends that democratic dyads should prefer litigation more often than less democratic dyads, though the empirical record of this variable is mixed, at best (Allee and Huth 2006; Gent and Shannon 2011; Mitchell 2002). *Power Parity* is a continuous variable measuring the disparity in material capabilities between dyad members in a particular year. This measure relies on the Composite Index of National Capabilities (CINC) to measure material capabilities, and it is equal to the larger of the two dyad member's CINC scores divided by the sum of the two (Singer, Bremer, and Stuckey 1972; Wiegand and Powell 2011). This formula returns a score between .5 and 1, with elevated levels indicating a larger disparity in power levels between dyad members. I expect that large power disparities should reduce the probability of litigation proposals because powerful states facing less powerful opponents are likely to use bargaining leverage in nonbinding settings to achieve favorable outcomes without resorting to the "gamble" of litigation.

Islamic Law Dyad is a categorical variable equal to the number of Islamic law states (ILS) in each dyad (0, 1, or 2). By drawing from the Islamic legal tradition in

⁷⁵ Goertz (2006) questions the so-called "weakest link" method for gauging joint democracy, arguing that a more appropriate measure would code *Joint Democracy* equal to 1 when either state in a dyad is democratic. No inferences were altered when this alternative method was employed in my empirical models, and democracy remained insignificant.

domestic institutions, ILS lack affinity with the principles and procedures of the international judiciary, which are generally based on European civil law (Mitchell and Powell 2011). Due to diverse legal approaches and negative experiences of Islamic law states in international legal forums, the literature suggests that such states will be less likely to prefer adjudication or arbitration than other states (Powell 2015; 2018). My coding for ILS was taken from Powell (2015).⁷⁶ Finally, *Global Pacific Settlement Agreements* and *Regional Pacific Settlement Agreements* measure the number of global and regional agreements encouraging the peaceful settlement of international disputes to which both dyad members belong. I expect that the effect of this variable will be positive, reflecting the literature's assertion that mutual agreements for the pacific settlement of disputes promote non-violent dispute resolution, including adjudication and arbitration (Shannon 2009). Data for this variable was taken from the Multilateral Treaties of Pacific Settlement (MTOPS) dataset (Hensel 2005).

Finally, two distinct measures of time are included in my analysis. *Dispute Age* is equal to the number of years that have passed since a dispute dyad became active. The inclusion of this variable removes confounding from any broad temporal trend, including mounting dispute costs over time that are independent of settlement attempts. I expect the influence of this variable on preferences for litigation to be positive, though far less substantial than that of *Prior Peaceful Settle Attempts*. *Year* measures the calendar year in which an observation takes place. To facilitate model estimation, this variable is equal to 0 in 1945 and increases by one in each subsequent year. This variable captures the effects

⁷⁶ Powell (2015, note 1) defines Islamic Law States as “states that officially and directly apply sharia to a substantial part of personal, civil, or criminal law.” There are 29 such states.

of judicialization throughout the international system during the latter half of the 20th century. I expect this variable to have a positive effect on litigation because older, more established international courts are more likely to evoke trust from states than newer, untried settlement venues (Alter 2014). Vitaly, while both variables measure some dimension of time, the dimensions are distinct enough to avoid collinearity. These measures were created using the ICOW provisional dataset (Hensel 2001).⁷⁷

3.4 Empirical Analysis

In my analysis, I utilize a hybrid logistic regression, also known as the “between-within” method, that estimates both random and fixed effects on a binary dependent variable with panel data (Allison 2009; Bell and Jones 2015). This model channels the unique benefits of fixed effects logistic regression by isolating the effects of within-dyad changes in my independent variables, making them robust to confounding from all dyad-level variables while still preserving the flexibility of the traditional random effects logistic regression.⁷⁸ The use of this model means that there is no need to include time invariant variables in my model, though some are included for the sake of comparison.

⁷⁷ Due to the complexities of my chosen model, summary statistics for all variables are provided in Appendix A.

⁷⁸ Conventional fixed effects models require that time-invariant independent variables be omitted from the analysis due to correlation with the subject-level fixed effects. Additionally, the conditional logit model, which drops subjects from consideration when they experience no change in the dependent variable over time, is traditionally used when dealing with dichotomous dependent variables in panel data. The hybrid method has no such requirements, and its estimates remain consistent so long as the effects of the subject level means remain linear or the changes in the “within” effects made by the use of such non-linear terms are small. This assumption was tested, and only the “between” effect for *Prior Peaceful Settlement Attempts* had significant nonlinearities. Furthermore, these induced changes in the “within” effects of the same of less than 0.01 in all instances. As such, bias induced by this violation of assumptions appears to be minimal. For more on this issue, see Allison, Paul, “Problems with the Hybrid Method,” *Statistical Horizons*, September 2, 2014, <http://statisticalhorizons.com/problems-with-the-hybrid-method>.

The hybrid model requires that two separate parameters be estimated for each independent variable. The “between” parameter represents the dyad level effect of the variable, while the “within” represents the effect of changes in each variable within a claim dyad over time. To illustrate, my theory claims that the failure of non-binding settlement attempts and methods substantially increases the probability of at least one state in a dyad proposing litigation. The “within” effect of an additional nonbinding settlement attempt is the estimated effect of adding one additional settlement failure to a dyad, while the “between” effect compares dyads that have high overall levels of settlement activity to those that have lower levels of such activity. In practice, the “between” variables are equal to the mean of the variable within a given dyad, while the “within” variables are the original, time-variant form of the variable in question.⁷⁹ A coefficient is then estimated for each part.⁸⁰

I estimate four different hybrid logistic regressions to test my theoretical argument. The first two test the overall effects of my disaggregated settlement failure variables in two different samples, a full sample including data from 1945 to 2012 that omits variables based on the ICOW dataset, and a truncated sample that relies on the ICOW data and covers the time period from 1945-2001. The first model contains a substantially smaller amount of right censoring and missing data, at the expense of

⁷⁹ With the hybrid method, it is common to center the time-variant independent variables at their means (Allison 2009). However, there is no mathematical requirement that this be done, and models that instead include the original form of the time-variant variables are also known as correlated random effects models (Schunck 2013). Such models only change the interpretation of the “between” effects, which represent the difference between the “within” parameter and the “between” parameter. The “within” effects remain the same. This choice of model was made to improve the interpretability of the “within” effects.

⁸⁰ Importantly, the dyad-level means must be that of the estimation sample, rather than of the whole dataset. As my models utilize two different samples, 1945-2012 and 1945-2001, the dyad level means are numerically different for each sample.

eliminating salience- and MID-related variables from the equation. Thus, the conclusions drawn from this model are based on a larger sample across a wider variety of cases and years. These results are more generalizable and reflective of current trends. The second model does the opposite, trading sample breadth for the inclusion of potential confounders and, most importantly, variables involving violent attempts to settle territorial and maritime disputes.⁸¹ Findings from this model should be regarded as less representative of territorial disputes on the whole, but they provide the only way of assessing the influence of violent settlement methods on the likelihood of litigation proposals. Together, both models provide a reasonable assessment of the overall importance of settlement failure for determining the timing of litigation in territorial and maritime disputes. I estimate two additional models with my aggregated settlement failure variables (*Prior Attempts* and *Prior Types*). The first establishes a baseline for comparison, while the second tests for the hypothesized interaction effect between settlement failure and offshore territories. I limit my data for the latter two models to 1945-2001, as per the limitations of the ICOW dataset. Despite this limitation, the sample remains large enough to provide a useful, informative test of my theory. For all models, a random intercept is included to model within-dyad correlation in the error term. All “within” variables are lagged by one year to improve causal inference. Finally, to avoid problems of left censoring, claims that began before 1945 are omitted from all models.⁸²

⁸¹ Higher order polynomials of these effects were tested, but none were significant, indicating that no noticeable nonlinear relationships between settlement failure and the probability of litigation are present in my data.

⁸² In panel data, left censoring occurs when subjects enter the observation period after they become “at risk” for experiencing the outcome of interest (Allison 2014). This can induce significant bias in the estimated coefficients, and is extremely difficult to correct for. In my data, this takes the form of

Table 3.1 presents the results for two models testing the overall effects of settlement failure on the probability of a litigation proposal, while Figures 3.3 and 3.4 provide graphical representations of the predicted probabilities for all but the “between” effects from these models.⁸³ Overall, the results support my theoretical claims. The within-dyad coefficient for *Prior Peaceful Settlement Attempts* is positive and highly significant in both models, though the coefficient estimated for the 1945-2001 model (.347) is over twice as large as that returned by the 1945-2012 model (.166). There are multiple possible reasons for this difference, including increased sampling variability in the smaller 1945-2001 sample and the inclusion of different within-dyad control variables that alter the estimates significantly. Nevertheless, the consistently positive and significant coefficients show that increases in prior settlement attempts correlate with increases in the likelihood of a litigation proposal. Furthermore, Figures 3.3 and 3.4 show that this relationship is far from miniscule. In the 1945-2012 model, in claim dyads where only negotiations have been attempted, the probability of a litigation proposal increases from .06 to .26 when the number of prior peaceful settlement attempts rises from 0 to 22.⁸⁴ A similar shift in *Prior Peaceful Settlement Attempts* in the 1945-2001 model leads to a slightly larger increase from .03 to .27. Naturally, 22 active settlement years is quite the large interval, and only 8 of the 181 disputes included in my sample last this long or longer. However, this result only emphasizes the point that the uncertainty of

territorial and maritime disputes that began prior to 1945 and for which data collection was only carried out after said cut-off. All such left-censored cases were dropped from my analysis to avoid bias.

⁸³ For more on the interpretation of the “Between Effects,” see note 79.

⁸⁴ The overall marginal effect of such a shift, averaged over all other variables, is .04 to .16 in the 1945-2012 model and .02 to .29 in the 1945-2001 model.

adjudication and arbitration and the potential costs of losing a territorial court case are very high. Litigation is only considered in disputes with substantial histories of settlement failure.⁸⁵

TABLE 3.1

HYBRID LOGISTIC REGRESSIONS TESTING THE EFFECTS OF SETTLEMENT
FAILURE ACROSS TWO GLOBAL SAMPLES OF TERRITORIAL DISPUTES,
1945-2001 AND 1945-2012

Independent Variable	1945-2012		1945-2001	
	Coefficient	S.E.	Coefficient	S.E.
Within Effects				
<i>Prior Peaceful Settlement Attempts</i>	0.166***	(0.057)	0.347***	(0.108)
<i>Prior MIDs</i>			-0.234	(0.217)
<i>Negotiations Attempted</i>	3.063***	(0.914)	4.786***	(1.419)
<i>Nonbinding Third Party Attempted</i>	1.037*	(0.601)	9.267***	(2.698)
<i>MID Attempted</i>			1.968**	(0.791)
<i>Joint Democracy</i>	0.834	(0.585)	1.026	(0.848)
<i>Power Parity</i>	4.512	(3.654)	5.306	(6.314)
<i>Global Pacific Settlement Commitments</i>	0.353	(0.312)	1.611***	(0.557)
<i>Regional Pacific Settlement Commitments</i>	0.282	(0.361)	0.686	(0.709)
<i>Tangible Salience</i>			13.928	(11.977)
Between Effects				
<i>Prior Peaceful Settlement Attempts</i>	-0.217*	(0.121)	-0.045	(0.185)
<i>Prior MIDs</i>			-0.060	(0.414)

⁸⁵ See 55 for a full timeline of settlement failure in the Hawar Islands contention. In that claim, the number of rounds of failed settlement activity (5) combined with the types of failed settlement method (mediation and a MID) to produce a high likelihood of litigation.

TABLE 3.1 (contd.)

Independent Variable	1945-2012		1945-2001	
	Coefficient	S.E.	Coefficient	S.E.
<i>Negotiations Attempted</i>	-2.861**	(1.339)	-5.479***	(1.784)
<i>Nonbinding Third Party Attempted</i>	-0.140	(1.222)	-9.648***	(3.284)
<i>MID Attempted</i>			0.683	(1.578)
<i>Joint Democracy</i>	1.009	(1.199)	-0.368	(1.860)
<i>Power Parity</i>	-12.652***	(4.550)	-11.352	(7.086)
<i>Global Pacific Settlement Commitments</i>	1.229**	(0.520)	0.104	(0.768)
<i>Regional Pacific Settlement Commitments</i>	-0.505	(0.439)	-0.904	(0.764)
<i>Tangible Salience</i>			-14.503	(12.060)
Time Invariant Effects				
<i>Intangible Salience</i>			0.581	(0.512)
<i>Offshore</i>			2.792**	(1.157)
<i>1 Islamic Law State</i>			0.752	(1.191)
<i>2 Islamic Law States</i>			1.652	(1.507)
Time Effects				
<i>Dispute Age</i>	-0.043	(0.030)	-0.182***	(0.050)
<i>Year</i>	0.087***	(0.027)	0.052	(0.033)
Random Intercept				
Constant	-6.881***	(2.501)	-9.129**	(4.355)
Var(Constant) by Claim Dyad	10.780	(3.435)	9.116	(3.546)
N	3234		2690	
Claim Dyads	181		180	
Log Likelihood	-349.668		-198.087	
LR Test vs. Logit Model (chibar2(01))	226.86		91.95	
Prob. >= chibar2	0		0	
Wald Chi2	(16) 118.84		(26) 60.45	
Prob. > chi2	0		0.0001	

*p<.1 **p<.05 ***p<.01, All "Within Effects" variables lagged by 1 year.

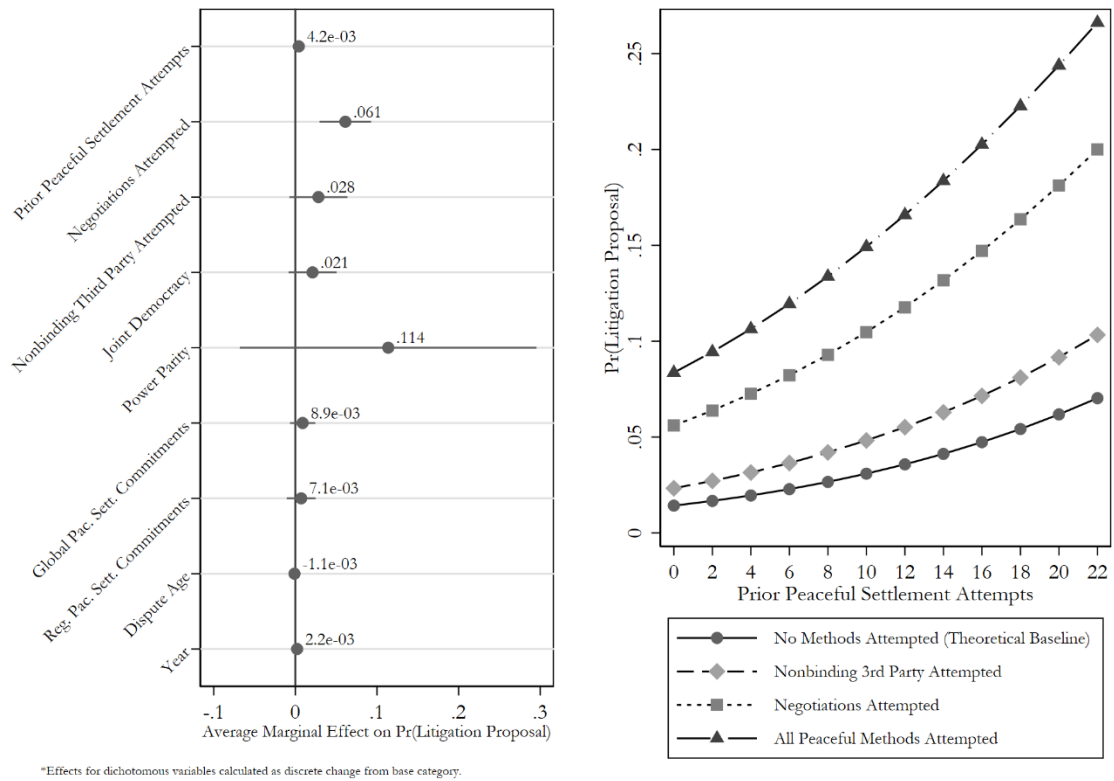


Figure 3.3: Average Marginal Effects and Predicted Probabilities: Litigation Proposals in Territorial Disputes, 1945-2012

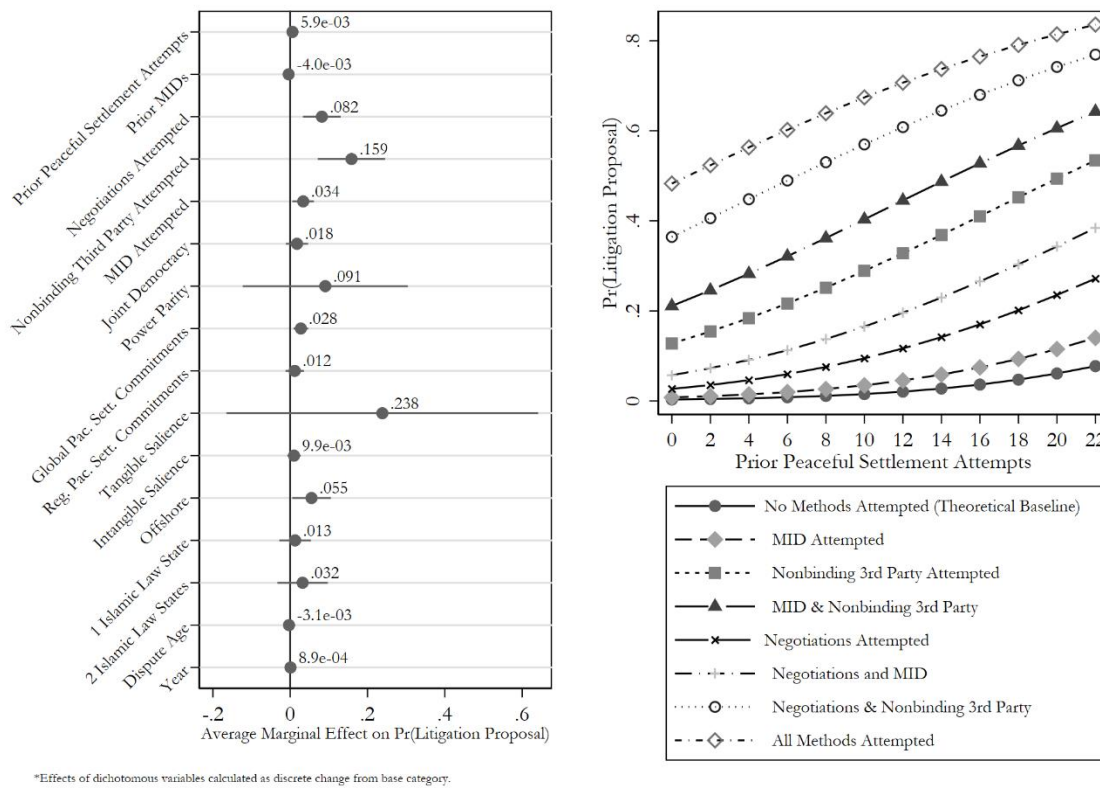


Figure 3.4: Average Marginal Effects and Predicted Probabilities: Litigation Proposals in Territorial Disputes, 1945-2001

Negotiations Attempted and *Nonbinding Third Party Attempted* are positive and significant in both models. Furthermore, *MID Attempted* is positive and significant in the 1945-2001 model. These results are in line with my theoretical expectations: as new information regarding the inefficacy of particular settlement methods becomes available, dyadic members will increasingly look to international courts and arbitral panels to resolve deadlocked territorial and maritime claims. In addition, the average effect of having attempted bilateral negotiations in the past on the probability of a litigation proposal is .06 in the 1945-2012 model and .08 in the 1945-2001 model. The same effect for having attempted nonbinding third party methods is .03 in the 1945-2012 model and

.16 in the 1945-2001 model. Finally, the average effect of having attempted a MID is .03. Considering that the overall average predicted probability of a litigation proposal across all disputes is .06 in the 1945-2012 model and .05 in the 1945-2001 model, these effects are quite substantial. Attempting bilateral negotiations and nonbinding third party methods increases the likelihood of proposals for litigation considerably, independent of the number of rounds of settlement activity. Interestingly, the number of prior MIDs is negative and insignificant. The negative sign may simply indicate that mounting levels of violence within a dyad decrease trust within said dyad, leading to a lower probability of litigation and potentially peaceful settlement in general. The insignificance of the coefficient may indicate that, while failed violence within a dyad promotes litigation, this effect does not mount as levels of violence increase over time.

The line plots presented in Figures 3.3 and 3.4 demonstrate the additive effect of combining information regarding the number and type of prior failed settlement attempts in territorial disputes. For the 1945-2012 model, simply having attempted both negotiations and nonbinding third party methods increases the probability of a litigation proposal in a dispute to nearly .1, even if only two active peaceful settlement years have been experienced. This number rises to roughly .15 after 10 active years and to over .2 after 15 such years. Compare this to the predictions for a dispute in which only bilateral negotiations have taken place, where the predicted probability of a litigation proposal languishes below .05 until 10 active peaceful settlement years have passed and is only slightly greater than .1 after 22 such years. The effects are even more pronounced in the 1945-2001 model. Here, when dyad members have attempted negotiations and nonbinding third party methods, the predictions returned are greater than .4 for nearly all

subsequent active years, rising even higher when violent methods are added to the equation. However, there is greater uncertainty surrounding these predictions due to the smaller sample size and range, and I regard the predictions returned by the 1945-2012 model to be more realistic overall. In any case, given that these effects are also statistically significant, it is safe to say that a combination of the number and type of prior settlement types exerts a strong influence over how attractive litigation is to states involved in territorial disputes.

Among the control variables, the “Within Effects” coefficient for *Global Peaceful Settlement Commitments* is significant and positive in the 1945-2001 model. This provides some evidence in support of claims that mutual international agreements within dyads influence the probability of litigation proposals in a positive manner. While the “Between Effects” are difficult to interpret, the coefficients for *Negotiations Attempted* in both models are significant and negative. The “Between Effects” coefficients for *Power Parity* and *Prior Peaceful Settlement Attempts* are negative and significant in the 1945-2012 model, while that of *Global Peaceful Settlement Commitments* is positive and significant in the same. Finally, the “Between Effects” coefficient for *Nonbinding Third Party Attempted* in the 1945-2001 model is negative and significant. Mathematically speaking, these results indicate that there are significant differences in how these variables impact the probability of litigation proposals at the within- and between-claim-dyad levels (Schunck 2013). Changes in sign between “Within” and “Between” coefficients do not necessarily imply an opposing effect at each level. For example, the negative effect for the “Between Effects” coefficient for *Power Parity* means that the difference between the real “Between Effect” and the “Within Effect” is negative,

implying that the “Within Effect” is substantially larger. The “Between Effects” coefficients for *Negotiations Attempted* and *Nonbinding Third Party Attempted* are significantly larger in the 1945-2001 model than they are in the 1945-2012 model. This is likely due to increased sampling variability in the 1945-2001 model.⁸⁶

Only one of the time-invariant variables included in the 1945-2001 model, *Offshore*, is significant and positive. This indicates that disputes involving offshore territories connected to maritime delimitation are significantly more likely to experience litigation proposals than land-based claims. This finding supports the claims of Owsiak and Mitchell (2017), who contend that the broad interests involved in maritime contentions make litigation attractive as a method for solving problems of preference aggregation. Finally, the “Time” variables suggest some interesting trends. In the 1945-2012 model, *Year* is significant but *Dispute Age* is not. The *Year* effect is positive, while that of *Dispute Age* is negative. This supports the judicialization hypothesis, which states that litigation has become more likely throughout the international system as courts have developed over the latter half of the twentieth century. Yet, while the signs stay the same, *Dispute Age* becomes significant in the 1945-2001 model, while *Year* drops out of significance. This means that there is some evidence that the simple passage of time actually decreases the likelihood of litigation proposals. However, it should be noted that this effect is conditioned upon both the number of active settlement years and the types of prior settlement method tried, all of which are positive influences on the probability of litigation proposals. Once these effects are accounted for, it appears that the passage of

⁸⁶ Indeed, these effects remained large in the 1945-2001 sample, even when the ICOW controls were removed.

time slightly decreases the attractiveness of international courts and arbitral panels. This result reflects the fact that protracted disputes without substantial amounts of settlement activity experience litigation less frequently.

Table 3.2 presents the results of models testing interactions between territorial location and settlement failure. Figure 3.5 presents the predicted probabilities for these models in graphical format. The results support Hypothesis 1. The coefficients for the interactions between *Offshore* and both *Prior Attempts* and *Prior Types* are statistically significant, meaning that offshore territories noticeably influence how states process the information from both dimensions of settlement failure. However, the interaction term for *Prior Attempts* is negative, meaning that the effect of mounting prior settlement attempts over time is suppressed for offshore and maritime disputes. In contrast, as per my expectations, the interaction term for *Prior Types* is positive, indicating that the effect of the failure of new settlement methods within a dispute is magnified in offshore disputes. Figure 3.5 highlights these disparate trends: the probability of a litigation proposal climbs to over .3 in disputes with onshore territories after 22 prior settlement attempts, but it decreases slightly over the same span for offshore disputes. In contrast, the prediction for offshore disputes diverges visibly and positively from that of land-based disputes after the attempting only two settlement methods, with the probability of a litigation proposal jumping to greater than .5. Disputes with a contiguous component remain below .25 for the entire range of *Prior Types*. Thus, it appears that my two dimensions of settlement failure function in contradictory ways in offshore territorial disputes. The failure of new types of settlement method seems to increase the probability of litigation proposals to a greater degree than the same failures in land-bound disputes. However, once this is

accounted for, mounting numbers of failed settlement attempts in offshore disputes have a suppressing effect.

TABLE 3.2

HYBRID LOGISTIC REGRESSIONS TESTING THE INTERACTION BETWEEN
SETTLEMENT FAILURE AND OFFSHORE TERRITORIES ON A GLOBAL
SAMPLE OF TERRITORIAL DISPUTES, 1945-2001

Independent Variable	Coefficient	S.E.	Coefficient	S.E.
Within Effects				
<i>Offshore</i>	2.120**	(0.968)	1.425	(1.824)
<i>Prior Attempts</i>	0.198**	(0.0908)	0.401***	(0.115)
<i>Offshore x Prior Attempts</i>			-0.476***	(0.127)
<i>Prior Types</i>	3.739***	(0.637)	2.995***	(0.838)
<i>Offshore x Prior Types</i>			1.804*	(1.086)
<i>Joint Democracy</i>	1.114	(0.851)	1.256	(0.801)
<i>Power Parity</i>	3.645	(6.116)	2.425	(6.741)
<i>Global Peaceful Settlement Commitments</i>	1.573***	(0.532)	1.378**	(0.564)
<i>Regional Peaceful Settlement Commitments</i>	0.566	(0.646)	0.397	(0.670)
<i>Tangible Salience</i>	8.266	(10.25)	11.81	(10.14)
Between Effects and Other Controls				
<i>Prior Attempts</i>	-0.0281	(0.143)	-0.221	(0.157)
<i>Prior Types</i>	-3.223***	(0.875)	-2.676***	(0.992)
<i>Joint Democracy</i>	-0.595	(1.615)	-0.381	(1.604)
<i>Power Parity</i>	-9.755	(6.746)	-9.131	(7.345)
<i>Global Peaceful Settlement Commitments</i>	-0.0253	(0.677)	0.188	(0.725)
<i>Regional Peaceful Settlement Commitments</i>	-0.710	(0.690)	-0.416	(0.715)

TABLE 3.2 (contd.)

Independent Variable	Coefficient	S.E.	Coefficient	S.E.
<i>Tangible Salience</i>	-8.708	(10.31)	-12.25	(10.21)
<i>Intangible Salience</i>	0.402	(0.447)	0.396	(0.460)
<i>1 Islamic Law State</i>	0.763	(1.077)	0.742	(1.102)
<i>2 Islamic Law States</i>	0.902	(1.290)	1.119	(1.321)
<i>Dispute Age</i>	-0.164***	(0.0455)	-0.150***	(0.0467)
<i>Year</i>	0.0483*	(0.0288)	0.0435	(0.0306)
Random Intercept				
<i>Constant</i>	-7.485**	(3.409)	-7.226**	(3.419)
<i>Var(Constant) by Claim Dyad</i>	7.568	(2.782)	8.374	(3.208)
N	2,691		2,691	
Claim Dyads	181		181	
Log Likelihood	-207.764		-199.794	
AIC	459.529		447.588	
BIC	589.278		589.132	

*** p<0.01, ** p<0.05, * p<0.1 All time-variant "Within Effects" variables lagged by 1 year.

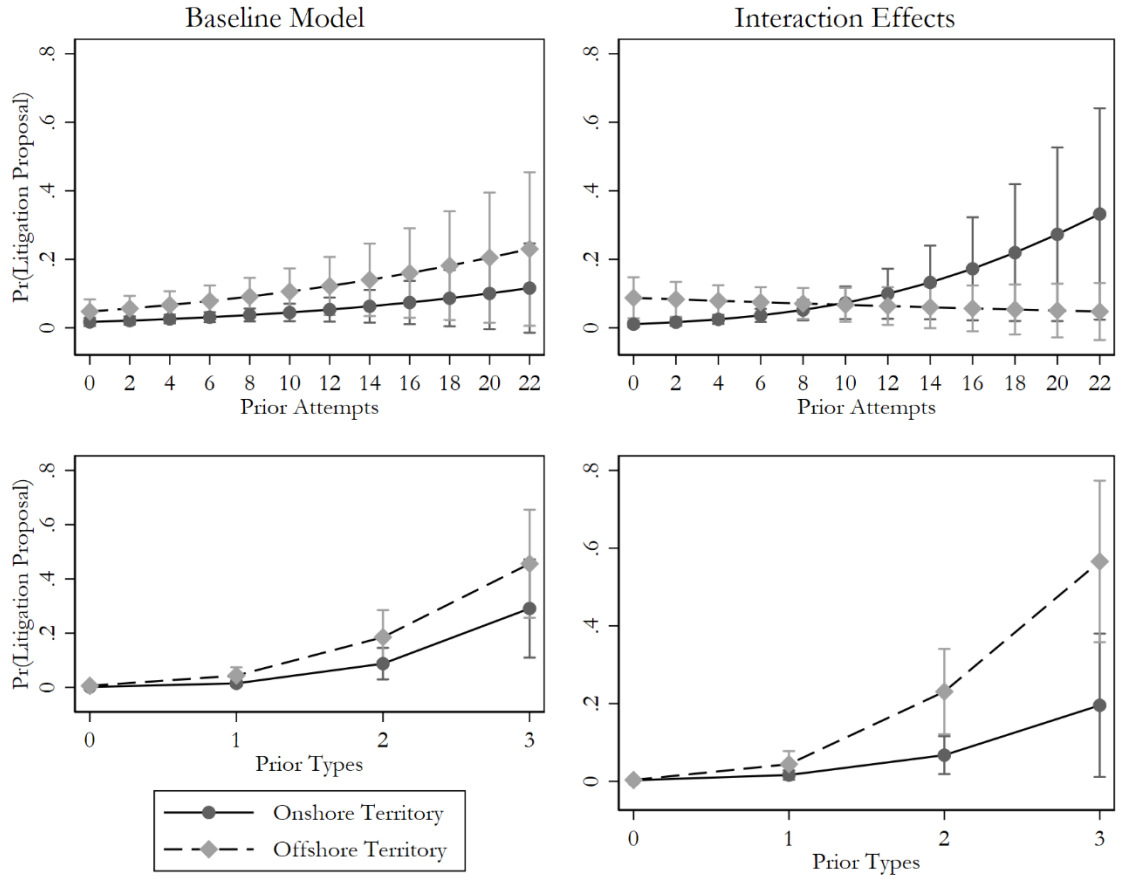


Figure 3.5: Average Marginal Predicted Probability Plots: Offshore Territories, Settlement Failure, and Litigation Proposals in Territorial Disputes, 1945-2001

These results require qualification, however. Robustness checks revealed that omitting two substantial outliers, litigation proposals in the Halaib Triangle dispute between Egypt and Sudan in 1994 and 1995, pushes the interaction between *Offshore* and *Prior Types* out of significance. Already from Figure 3.5 it is apparent that the change in the *Prior Types* effect from the baseline to the interaction model is somewhat small. However, omitting the unique dynamics of the Halaib Triangle dispute, in which a MID occurred the year after a litigation proposal, causes this difference to become statistically trivial. When it comes to change over time in prior types of settlement method attempted,

Hypothesis 1 seems to have little support once outlying observations are eliminated from the analysis. All other inferences remain the same.⁸⁷ To summarize, there is convincing evidence that settlement failure affects the probability of litigation in all disputes, but only the effect of the number of prior settlement attempts changes noticeably between offshore and land-based contentions, and this in a negative fashion.

Interaction model predicted probabilities from four major territorial disputes are displayed in Figure 3.6, and they illustrate this puzzling result.⁸⁸ Of the four disputes depicted, the Hanish Islands (Yemen-Eritrea) and Sipadan and Ligitan (Malaysia-Indonesia) disputes are offshore disputes. The Aouzou Strip (Libya-Chad) and Hawar Islands/Zubarah (Qatar-Bahrain) disputes are classified as onshore disputes, the latter because the land-based territory of Zubarah, located on the northern end of the Qatari Peninsula, was included in the dispute (Wiegand 2012). Both the Hanish Islands and Sipadan and Ligitan contentions experienced litigation proposals within three years of initiation. Contrast this with the Hawar Islands and Aouzou Strip cases, in which the first litigation proposal occurred 16 years after initiation. The sharp increases in the predicted probabilities shown in Figure 3.6 are all due to the failure of new settlement methods. The massive shift experienced at the beginning of the Hanish Islands dispute occurs because, in 1995, a MID between Yemen and Eritrea drew a French mediation attempt in the same year that eventually led to litigation (Lefebvre 1998). The Sipadan and Ligitan

⁸⁷ My baseline results confirm Owsiaik and Mitchell's (2017) findings by showing that offshore territories increase the probability of litigation proposals at all time points.

⁸⁸ The ICJ rendered a binding decision in the Sipadan and Ligitan disputes in 2002, one year after my panel ends. For more on this case, see *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, 625.

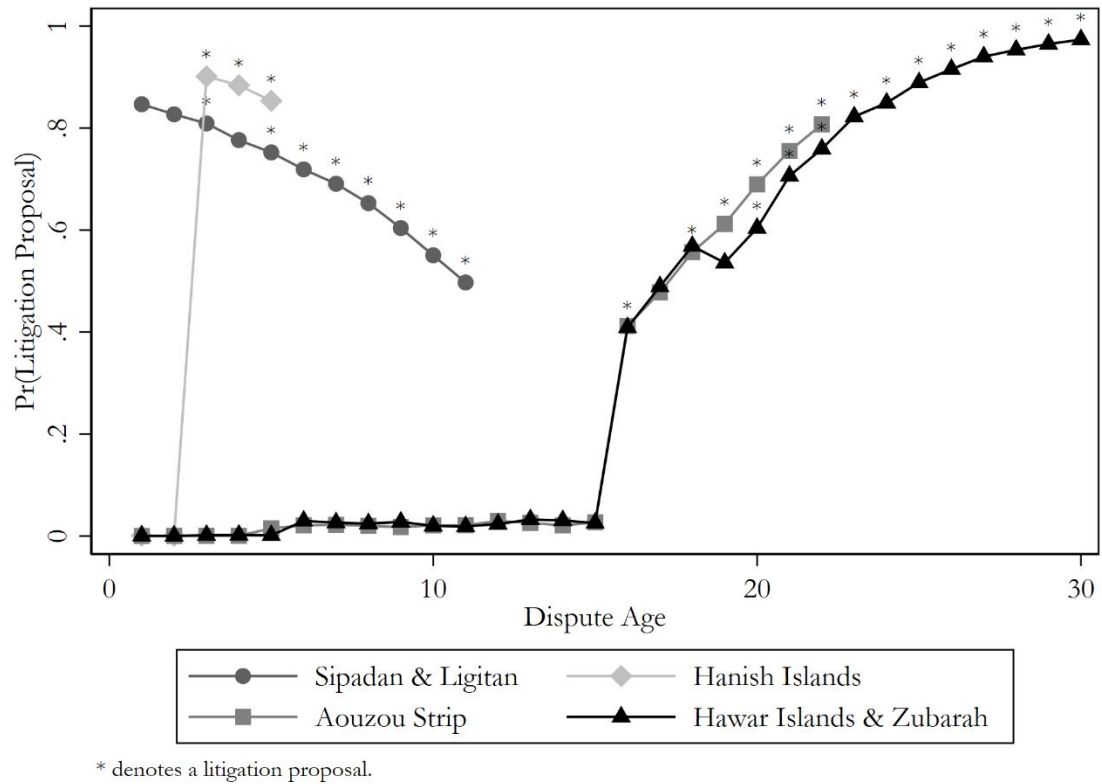


Figure 3.6: Line Plot: Settlement Failure and Predicted Probabilities for Litigation Proposals in Four Major Territorial Disputes

dispute begins with a high predicted probability because the territory is offshore and Malaysia and Indonesia initiated negotiations in the first year of the dispute (Haller-Trost 1995). Malaysian Prime Minister Mahathir Mohamad cited settlement failure as the cause of litigation by declaring that “...[s]ince it is very clear that both parties cannot accept each other’s claims and cannot reach a decision, it is natural that we go to a third party.”⁸⁹

⁸⁹ *Straits Times*, 14 September 1994. This statement was made immediately after Malaysia and Indonesia agreed to submit the dispute to the ICJ. The spikes in probability for both the Malaysia-Indonesia contention and the Yemen Eritrea dispute are not due to the estimated interaction between *Prior Types* and *Offshore*, which was shown to be outlier-driven.

The Aouzou Strip and Hawar Islands cases experience more modest spikes around the 16-year mark. In the former, this spike occurs due to a 1987-88 attempt at mediation by the O.A.U. (Ricciardi 1992, 380). The mediation failed to resolve the conflict in a definitive manner, but it did end the violent phase of the dispute and open the door for litigation at the ICJ in 1990. The latter occurs because of a MID that erupted between Qatar and Bahrain over the disputed territory in 1986. According to Wiegand (2012, 84) after the militarized clash, “realizing that the level of tension...was too high to successfully resolve the dispute through bilateral negotiations, the two states agreed again...to refer the dispute to the ICJ.” In both cases, policymakers cited settlement failure as the motivation behind proposals for litigation.⁹⁰ Thus, the failure of prior attempts at nonbinding settlement drove the states involved in these four contentions to try litigation.

Differences in the dynamics of settlement failure between onshore and offshore territorial are also apparent in Figure 3.6. In the onshore disputes, increases in the number of failed settlement attempts gradually increase the probability of litigation proposals, and the influence of *Prior Types* is smaller. This finding supports Wiegand’s (2012, 82) presentation of the settlement of the Hawar Islands dispute. Wiegand argues that both Bahrain and Qatar pursued parallel “tracks” of dispute resolution, all designed “to hasten a resolution of the dispute.” As the nonbinding tracks proved ineffective, the litigation “track” gradually became the preferred option. Similarly, the ICJ became the preferred

⁹⁰ As stated at 12, Qatar used a Saudi-mediated agreement and the failure of subsequent negotiations to justify its unilateral submission to the ICJ. Application (note 58) 16. A similar agreement and the failure of further rounds of talks was used to justify the Aouzou submission. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Special Agreement, International Court of Justice 1990, available at <http://www.icj-cij.org/files/case-related/83/6687.pdf>, 2.

settlement option of Libya and Chad because the war failed to resolve the contention and because an agreement between the two states known as the Algiers Accord required submission of the dispute to the ICJ if “political means” of dispute resolution failed (Ricciardi 1992, 380-381). Thus, onshore territorial disputes become more “ripe” for litigation as bargaining continues without result. My results support the conventional view of litigation as a “tiebreaker” in protracted, land-based territorial disagreements.

The opposite holds for offshore disputes. As Owsiak and Mitchell (2017) argue, litigation proposals are more likely in offshore territorial disputes because these disputes are primarily about property rights. International courts and arbitral panels can establish such rights even in the presence of bargaining deadlock. They can also avoid problems of preference aggregation endemic to maritime disputes. Figure 3.6 shows that the failure of new settlement methods causes the probability of litigation proposals to spike, but the passage of time and the amount of failed settlement activity both cause the likelihood of litigation proposals to decay. In a surprising way, these findings support Hypothesis 1. In offshore disputes, the probability of litigation is highest immediately after a new settlement method fails. The longer a deadlocked dispute continues after said failure, the lower the probability that litigation will be proposed. To this point, in the Ligitan and Sipadan dispute, deadlocked negotiations forced Malaysia to choose between doing nothing, submitting the dispute to the ASEAN High Council for nonbinding mediation, or litigation. Malaysia chose to propose litigation at the ICJ in 1994, justifying this choice by stating, “Malaysia chose the International Court so that the other Asean countries would not be burdened with the pain of deciding whom the islands belong to...[T]he Asean High Council also could not be expected to play a neutral role since Malaysia also

has territorial issues with other Asean members.”⁹¹ In other words, Malaysia desired to delegate the dispute to the ICJ early so as to avoid stirring up regional tensions and involving third parties that might complicate the settlement of the dispute further. In the Hanish Islands dispute, France, along with the O.A.U. and several other regional powers, became involved due to the disputed islands’ strategic location in the middle of the Red Sea (Plaut 1996; Ricciardi 1992). Violent conflict in this area would have had economic consequences for more than just Yemen and Eritrea, and arbitration occurred soon after French mediation efforts began to avoid this threat (Ricciardi 1992). When combined with my statistical findings, this evidence suggests that states involved in offshore territorial disagreements have an incentive to litigate more quickly than states embroiled in land-based claims due to the broad interests and economic costs that offshore disputes engage. This conclusion is in keeping with Hypothesis 1.

3.5 Conclusion

Territorial and maritime disputes are an enduring source of conflict between modern states. International courts and arbitral panels can help to resolve these disputes amicably, but only when the “gamble” of allowing judicial third parties to control the distribution becomes sufficiently attractive to overcome the costs of potential territorial losses. This attractiveness, in turn, is partially determined by the information that policymakers have regarding the efficacy of more certain and less costly nonbinding settlement techniques. When such techniques have proven to be ineffective at resolving

⁹¹ Malaysian Foreign Ministry Secretary-General *Tan Sri Ahmad Kamil Jaafar*, as quoted in *Straits Times*, 13 September 1994, and *Business Times*, 12 September 1994.

some disagreement, litigation becomes an attractive option compared to carrying on a costly, intractable dispute. The nature of the territorial assets in dispute modifies this calculus. States have incentives to propose litigation quickly in offshore territorial contentions due to the potential for third party engagement that will complicate the settlement process. States involved in land-based claims with narrower interests have a weaker incentive, and the road to litigation in such dispute gradual. Consequently, settlement failure works differently when diverse kinds of territory are in play, and the timing of litigation in territorial and maritime disputes is altered by an interaction between settlement failure and geography.

For policymakers and scholars of territorial conflict, my results demonstrate the complex nature of the decision to litigate in the realm of interstate territorial matters. It is not enough to say simply that adjudication and arbitration become likely as prior settlement attempts mount, as the opposite appears to occur when offshore territories are in dispute. One must know the context in which a given dispute is taking place before one can assess how settlement failure will alter state attitudes towards the “gamble” of litigation. Naturally, however, there are other factors that alter these attitudes independent from settlement failure. Chapter 4 examines the influence of legal arguments on the probability of litigation proposals. Chapter 5 analyzes how prior experiences with international judicial institutions can also alter the litigation calculus.

CHAPTER 4:

LEGAL ARGUMENTS, SETTLEMENT FAILURE, AND LITIGATION

4.1 Introduction

According to Shaw (2014, 732), “it is fair to say the international law has always considered its fundamental purpose to be the maintenance of peace.” Many scholars confirm this insight, finding that international judicial institutions, including the International Court of Justice (ICJ) and ad hoc arbitral panels, reduce conflict and promote cooperation among states (Alter 2014; Huth, Croco, and Appel 2013; Johns 2015; Klein 2014). Mitchell and Hensel (2007) find that, of the 29 territorial and maritime contentions submitted to the ICJ as of May 2007, 28 achieved eventual compliance.⁹² Territorial disputes that achieved full compliance with judicial decisions include the Hawar Islands dispute between Qatar and Bahrain, a long-running contention that nearly erupted into war in 1986, and the Aouzou Strip dispute between Libya and Chad, over which a 16-year-long war was fought between the two disputants (Ricciardi 1992, 382; Wiegand 2012, 84). This impressive record suggests that access to and the use of international courts and arbitral panels, known collectively as “litigation,” can

⁹² According to Mitchell and Hensel (2007), the dispute over the Gabčíkovo-Nagymaros dam project between Slovakia and Hungary had not achieved full compliance by the end date of their study. Three other disputes required subsequent legal action and negotiations to attain full compliance.

greatly improve the odds of peaceful settlement even in the most protracted territorial disputes.

However, scholars of international law and politics know relatively little about the process by which states come to prefer litigation. Some studies posit that democracies litigate more frequently than non-democracies due to normative and domestic political concerns (Allee and Huth 2006; Gent and Shannon 2011; Mitchell 2002). Other researchers propose territorial salience, material capabilities, domestic legal systems, past experiences, and treaty commitments as key determinants of proposals for litigation (Gent and Shannon 2011; Hensel 2001; Hensel et al. 2008; Lefler 2015; Mitchell 2002; Powell 2015; Wiegand and Powell 2011; Powell and Wiegand 2014). Finally, Huth, Croco, and Appel (2013) show that international law itself, in the form of clear legal arguments, promotes litigation proposals by creating legal focal points around which policy may be coordinated. While these works advance scholarly knowledge considerably, they have difficulty explaining when proposals for litigation are likely to occur. Consider that, in the Hawar Islands dispute, the regime type of Qatar and Bahrain remained stable and authoritarian throughout the dispute. The territorial salience, legal systems, past experiences, material capabilities, treaty commitments, and legal arguments of both disputants remained mostly static from the 1960s, when the dispute began, to 2001, when the dispute was resolved by ICJ decision (Wiegand 2012). While some of these factors can explain why litigation was more or less likely in the Hawar Islands dispute than in other disputes, none of them can explain why the first litigation proposal by Qatar occurred in 1987, 16 years after the dispute began.

To improve upon the insights of the existing scholarship, I turn my attention to the timing of litigation proposals in territorial disputes. I argue that settlement failure, defined as the inability of nonbinding settlement methods to resolve a dispute, drives the timing of litigation proposals. As prior attempts at bilateral negotiations and third-party mediation mount, so does the evidence that some aspect of the dispute or disputants is obstructing settlement by political means. I further propose that there are two dimensions of settlement failure, namely, the number and type of failed settlement attempts. Where prior research examines only the number of failed settlement attempts, I contend that types of failed dispute settlement procedures provide states with just as much information regarding the existence of bargaining deadlock as the number of failed attempts. Combining these two dimensions allows me to explain when litigation proposals will occur within an ongoing dispute by accurately modeling the settlement process.

Moreover, I submit that international law plays a pivotal role in this settlement process. Huth, Croco, and Appel (2013) show that legal focal points increase the probability of peaceful settlement in territorial disputes. This finding mirrors the general expectations of Fearon (1995), who claims that new information, such as that provided by international law, increases the probability of successful bargaining by reducing private information and the incentive to misrepresent it. My discussion and analysis of settlement failure already complicates this logic by showing that the information provided by successive failed rounds of bargaining often reveals the existence of intractable bargaining deadlock, rather than some mutually agreeable bargaining range. Litigation can break this deadlock by delegating responsibility for the distribution of territory to an impartial third party. Yet I also find that clear international legal arguments accelerate the

“path” to litigation by ramping up the effects of my two dimensions of settlement failure. This is the most novel contribution of this chapter: legal focal points interact with settlement failure to accelerate preferences for litigation. This is because clear laws create expectations for a “baseline” distribution of territory that may be resorted to when settlement failure is high and deadlocked negotiations make nonbinding bargaining difficult. This theory suggests that clear, unambiguous principles of international law do, indeed, promote peaceful conduct in territorial disputes by making adjudication and arbitration more attractive soon after bargaining deadlock sets in. Thus, the findings in this chapter are of interest both to scholars and to policymakers looking to settle outstanding territorial disputes or to promote the use of international courts and arbitral panels among states.

In this chapter, I first review the scholarly literature on litigation and territorial disputes. I then lay out my theory emphasizing the dual roles of settlement failure and legal arguments in bringing litigation proposals about. Finally, I test my theory using hybrid logistic regression techniques on a new panel dataset covering a large sample of interstate territorial disputes, 1945-2012. My findings support the conclusion that clear legal arguments increase the effects of settlement failure and accelerate the “path” to litigation considerably.

4.2 Timing and Litigation in Territorial Disputes

Scholars of territorial conflict have made impressive strides in understanding the causes of territorial litigation. Democracy, material capabilities, prior experiences with violence and binding settlement venues, the failure of other settlement venues,

membership in international agreements, and even legal arguments have all been found to alter the probability of litigation significantly (Allee and Huth 2006; Gent and Shannon 2011; Hensel et al. 2008; Hensel 2001; Huth, Croco, and Appel 2013; Lefler 2015; Mitchell 2002; Powell 2015; Wiegand and Powell 2011). However, these findings are limited in one respect, namely, they say little about the timing of proposals for litigation. For instance, Allee and Huth (2006) and Mitchell (2002) argue that normative and institutional logics embedded in democratic states increase the likelihood that democratic states will resort to using international courts or arbitral panels when resolving territorial disputes. While these works allow us to conclude that democratic states generally propose litigation more frequently, they are silent on the matter of when democratic states are likely to propose litigation within an ongoing dispute and whether sudden changes in a state's regime type also herald changes in dispute resolution strategy. Much of the current literature shares this feature by examining why states prefer international courts or arbitral panels without reference to when they are likely to do the same.

I propose that analyzing the timing of proposals for litigation can deepen scholarly understanding of the process by which states come to prefer legal settlement methods over other, less risky alternatives. It is certainly useful to know that democratic or materially disadvantaged states are more likely to pursue binding settlement methods. It is also important to know whether preferences for litigation follow, for instance, large shifts in these variables over time. Territorial disputes vary in length, but all are driven, not simply by static factors like material power, but also by evolving factors like mounting failures of negotiations over time or the termination of violent conflict. The settlement of territorial disputes is a process, rather than a single event. By modeling this

process, I aim to capture the peaceful settlement of territorial disputes more accurately than is currently the case. More to the point, my goal is to explain, not just why litigation occurs, but also when it becomes likely within individual territorial disputes.

Some studies devoted to the topic of litigation in territorial disputes include elements of timing in quantitative analysis. Within the quantitative literature, Gent and Shannon (2011), Hensel et al. (2008), and Lefler (2015) argue that mounting failures of nonbinding peaceful settlement alternatives lead states to consider the use of more formal methods like litigation. The evolution of preferences over time is said to occur due the relative risks of different settlement methods. Nonbinding settlement methods like bilateral negotiations or mediation by third parties are relatively low-risk because a disputant is always allowed to reject a resolution proposed during either alternative without binding consequence.⁹³ Binding methods, including adjudication and arbitration, are relatively high-risk because judicial decisions are final, generated entirely by a theoretically unbiased third party, and legally binding. In addition, judicial decisions are difficult to predict with a high degree of accuracy. As Mitchell and Powell (2011, 73) state, in international adjudication and arbitration, “no state can be certain that a court’s deliberations will lead to a conclusion that constitutes the state’s most preferred outcome.”⁹⁴ Binding methods therefore take the form of a potentially costly gamble,

⁹³ By “binding consequence,” I mean that failure to comply with decisions arrived at by the binding methods (i.e. adjudication and arbitration) can be met with sanctions under international law (O’Connell 2008). Though international law lacks a regular enforcement mechanism, it does allow for the application of economic, diplomatic, and reputational punishments (Johns 2012; 2015).

⁹⁴ The uncertainty of international litigation arises from the fact that much of the work of an international court or arbitral panel revolves around the sometimes-creative interpretation of international legal principles and choosing between rival norms (Abbot and Snidal 1998; Alter 2006; Mitchell and Powell 2011). This uncertainty is increased by the relative imprecision of modern international law as

wherein some or all of the disputed territory may be irrevocably lost at the behest of an external party. When attempting to settle a territorial dispute, states invariably attempt negotiations or mediation first, as they are low-cost and low-risk. States may also escalate a dispute militarily, at a significantly higher cost and risk (Senese and Vasquez 2008; Wiegand 2011). When these methods fail to resolve a territorial dispute, litigation becomes increasingly attractive as a certain but risky way to break the deadlock and end the disagreement, though this assumes that the disputants prefer a settlement over ongoing deadlock. Thus, settlement failure drives up the probability of a litigation proposal.

Prior work on this topic treats settlement failure as a somewhat minor factor affecting the likelihood of litigation. Other, mostly static factors such as democracy, power, or even beliefs regarding the unbiased nature of international courts constitute the focus of most studies. Nonetheless, the essential importance of settlement failure for the timing of litigation is borne out by qualitative scholarship on the subject. Wiegand (2012, 80) argues that the causes of successful litigation in the Hawar Islands dispute between Bahrain and Qatar boil down to three factors: “1) the inability of other regional states and the GCC to mediate the dispute, 2) incentives for significant oil and natural gas reserves, and 3) incentives for bilateral and regional cooperation on salient issues between the two states.” Factors 2 and 3 explain why Qatar and Bahrain continued proposals to resolve the dispute after deadlock occurred. Neither state could benefit much from oil and gas extraction or bilateral cooperation in other areas until the dispute was resolved. Factor 1

compared to domestic law and the fact that different international tribunals interpret the law differently (Mitchell and Powell 2011, 74; Powell and Wiegand 2010; Charney 1997; Spelliscy 2001).

reveals why and when litigation occurred. Negotiations and mediation failed to provide a workable solution to the disagreement, after which litigation became attractive as quick, definitive solution to the problem. As Burgis (2009, 154) notes, “the idea of resolving the dispute before the ICJ grew in vigour” as multiple Saudi attempts to reconcile the two disputants came to nothing. Settlement failure ratcheted up preferences for litigation in the Hawar Islands dispute.

The decisiveness of settlement failure holds in many other cases. In the Western Sahara dispute involving Morocco and Spain, Morocco’s abortive attempt at litigation occurred only after multiple attempts at negotiations with Spain failed in the early 1970s.⁹⁵ In similar fashion, Cambodia’s submission of the Temple of Preah Vihear dispute to the ICJ in 1959 came in response to the breakdown of bilateral negotiations with Thailand.⁹⁶ On occasion, the prospect of proposing litigation as a means of breaking a deadlock is premeditated. In the Gulf of Fonseca islands dispute between Honduras and El Salvador, a General Treaty of Peace signed between the two disputants stipulated that an agreement to litigate had to be negotiated if a bilateral Joint Frontier Commission failed to resolve the territorial dispute within five years.⁹⁷ The commission failed in its

⁹⁵ Morocco’s litigation proposal was less than honest because it aimed, not to resolve the dispute via adjudication, but to delay a Spanish self-determination referendum long enough to leverage Spain into a more favorable settlement (Hodges 1983, 181-183). Hodges (1983, 183) calls the proposal “a brilliant time-buying stratagem” that “[gave] Morocco time to argue its case abroad, build up its armed forces...and, perhaps, await political changes in Spain.”

⁹⁶ *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Preliminary Objections, Judgment of 26 May 1961: I.C.J. Reports 1961, 17; *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962: I.C.J. Reports 1962, 6.

⁹⁷ Article 31 of the General Peace Treaty between the Republics of El Salvador and Honduras reads, “If, upon the expiry of the period of five years laid down in article 19 of this Treaty, total agreement has not been reached on frontier disputes concerning the areas subject to controversy or concerning the legal situation in the islands or maritime areas, or if the agreements provided for in articles 27 and 28 of

task, and litigation proceeded as required.⁹⁸ Indeed, many treaties and agreements made with regards to territorial disputes include clauses either mandating the use of adjudication or arbitration after a set period or requiring that all political methods of peaceful settlement be attempted before litigation is proposed.⁹⁹ Naturally, other factors played a role in determining the timing of proposals for litigation in the aforementioned cases. However, these examples make it clear that nonbinding settlement failure is the primary determinant of when litigation becomes attractive to states involved in territorial disputes. The likelihood of litigation increases as the evidence for deadlock grows more robust.

4.2.1 Law and the Timing of Litigation

The effects of nonbinding settlement failure on the probability of proposals for litigation are not static. Settlement failure affects the probability of litigation proposals by providing states with information regarding the existence of bargaining deadlock and the efficacy of various dispute resolution tactics. However, different states in different circumstances process this information in distinctive ways. Consider a fictitious territorial dispute between two states, A and B. As described above, increasing levels of settlement failure tell both A and B that deadlock exists, making adjudication and arbitration more

this Treaty have not been achieved, the Parties agree that, within the following six months, they shall proceed to negotiate and sign a special agreement to submit jointly any existing controversy or controversies to the decision of the International Court of Justice.”

⁹⁸ For more on this case, see *Land, Island, and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua Intervening)*, Judgment of 11 September 1992, I.C.J. General List No. 75.

⁹⁹ For example, the 1990 Algiers Accord made between Chad and Libya in the Aouzou Strip dispute required that the disputants attempt one more year of negotiations before submitting the contention to the ICJ (Ricciardi 1992). For more on this dispute, see 130-132.

attractive. This is particularly the case when multiple types of nonbinding settlement method have been tried and found wanting. However, the nature of the legal arguments surrounding the disputed territory alters how states process the information provided by settlement failure. From a purely rationalistic perspective, if A's legal claims to the territory are clearly superior to those of B, A should be much quicker to propose litigation because it is relatively certain of victory in the courtroom.¹⁰⁰ The intrinsic uncertainty of litigation is lowered, making the advantaged state far more likely to express a preference for adjudication or arbitration after only a small amount of settlement failure. In the same situation, again from a rational viewpoint, B appears likely to resist litigation even under conditions of heightened settlement failure precisely because defeat and a subsequent loss of territory is almost guaranteed.

The reality is more complicated than this account attests. Huth, Croco, and Appel (2013) argue, with empirical backing, that legal ambiguity, rather than advantage and disadvantage, is a decisive factor for determining whether states propose legal methods in territorial disputes. These scholars contend that distribution problems, conflicting preferences, and private information hinder cooperation on territorial matters. In other words, states frequently disagree over how disputed territory should be divided, and they also often disguise how much territory they are willing to lose in an attempt to get a better "deal" (Huth, Croco, and Appel 2013, 92). When rules of international law regarding title to the disputed land are clear on which disputants are entitled to what

¹⁰⁰ Hensel (2013) defines "claims" in the context of territorial disputes thus: "A territorial claim involves explicit contention between two or more states over the ownership of a piece of territory. Official representatives of the government of at least one state must lay explicit claim to territory being occupied, administered, or claimed by at least one other state." I also employ this definition, which is in keeping with the legal definition of a "claim" as a legal demand for the redress of a loss (Black 1910).

portions of disputed territory, a legal focal point emerges. This means that the distribution of disputed territory supported by international law becomes a useful potential arrangement around which policymakers may coordinate a resolution to the dispute in question. To illustrate further, recall the hypothetical territorial dispute between states A and B. Assuming that the territory is easily divisible, there are a theoretically infinite number of ways that the territory might be distributed between A and B. This makes cooperation difficult because both A and B desire 100 percent of the disputed territory, but neither has useful information regarding how much territory the opponent is willing to concede. If the principles of international law suggest that, for instance, A is entitled to 75 percent of the disputed territory and B should receive the remaining 25 percent, then two dynamics facilitate peaceful settlement. First, the legal focal point creates concrete expectations. B now knows that A is unlikely to accept even a 50-50 split of the territory because the law does not support such a division. B therefore proposes only resolutions that are close to the 75-25 split suggested by the law, and A is likely to do the same. Second, incentives for A and B to conceal their bargaining preferences are reduced by the aforementioned expectations because the law narrows the range of reasonable distributions of territory. Thus, cooperation becomes more likely when legal focal points reduce the range of possible territorial distributions, create expectations among disputants, and reduce incentives for misrepresentation. This approach relies on Schelling (1960) and other research on the topic of bargaining outcomes.¹⁰¹

¹⁰¹ See, for example, Allee and Huth (2006); Garrett and Weingast (1993); Ginsburg and McAdams (2004); Keohane and Martin (1995); McAdams and Nadler (2008); Martin and Simmons (1998).

Of course, this logic does not explain the selection of judicial forums to resolve disputes. It actually suggests that disputes are more likely to be resolved out of court when legal focal points exist.¹⁰² Is the timing of proposals for litigation altered by legal focal points? Once again, consider the situation of states A and B. In the absence of nonbinding attempts at peaceful settlement, neither state is likely to propose litigation because neither has confirmed the existence of deadlock via cheap, nonbinding bargaining methods. As settlement failure mounts, so, too, does information regarding the existence of deadlock. Throughout this process, a legal focal point creates expectations in two ways. First, as noted above, states come to expect a narrow range of territorial distributions close to that which is supported by international legal rules. Second, states come to expect exactly the legal distribution of territory if the dispute is hypothetically submitted to an international court or arbitral panel. The latter holds because the rules of international law governing territory are common knowledge and because international judicial institutions are unlikely to stray from established legal principles when issuing decisions.¹⁰³ Consequently, when a legal focal point exists, states view the legally supported distribution of territory as a default or baseline distribution around which policy may be coordinated. As settlement failure increases in the presence of a legal focal point, states recognize that some other factor is creating bargaining deadlock. Protracted

¹⁰² Huth Croco and Appel (2013) argue that legal focal points improve bargaining, meaning that they improve the effectiveness of nonbinding means of dispute settlement. Mitchell and Powell (2011, 6) call this “bargaining in the shadow of [a] court.” According to some scholars, states litigate under these conditions in order to obtain domestic political cover for potentially costly territorial concessions (Allee and Huth 2006).

¹⁰³ Merrills (2005, 160) notes that the ICJ often engages in creative norm interpretation and determining “when new trends in practice, as evidenced in non-binding declaration codes, guidelines and other soft materials, cross the threshold of normativity and merit recognition as law.” However, this kind of creative work only occurs when clear, established principles are absent from a case.

territorial disputes are costly, both in terms of the immediate military and diplomatic resources used to press a claim and in terms of lost opportunities for cooperation caused by the disagreement (Wiegand 2011). In order to eliminate these costs, states may resort to litigation, since doing so effectively means accepting the default distribution of territory expected by both states and mandated by international legal principles. As such, when settlement failure mounts in the presence of a legal focal point, states resort to formal legal settlement methods as a predictable way of resolving a costly disagreement.¹⁰⁴ This argument may also explain why noncompliance with judicial rulings is so rare in territorial matters: states comply because litigation is simply a method for restoring peace, rather than an opportunity for territorial acquisition.

The same logic does not hold true in disputes that lack a legal focal point. As per Huth, Croco, and Appel (2013), cooperation is difficult in such cases due to problems of distribution and private information. Additionally, when international law is silent or unclear on the legally supported distribution of disputed territory, states have no mutual expectations regarding a baseline distribution of territory. In effect, without a legal focal point, litigation becomes a risky gamble that may result in any one of a large number of possible distributions of territory. Even under heightened conditions of settlement failure, states may resist this kind of litigation simply because the level of uncertainty is too high. Thus, the effects of settlement failure on state preferences for legal settlement methods ought to be smaller when no legal focal point exists.

¹⁰⁴ Sumner (2004) points out that the ICJ is remarkably consistent with regards to the legal arguments regarded as decisive for the acquisition of territory. In concert with my theory, this consistency and de facto legal precedent actually promotes the use of litigation by creating visible expectations for territorial distribution.

This line of reasoning raises an important question: if states desire to resort to the baseline distribution of territory mandated by international law, why do they not simply negotiate an agreement to that effect? After all, international legal clarity provides information regarding the private preferences of disputants, and the reduction of private information is said to facilitate negotiations rather than delegation (Fearon 1995; Keohane 1984). Additionally, litigation is a lengthy and costly process. Lawyers and consultants must be hired, evidence prepared, and the proceedings are likely to last for years on end. Huth, Croco, and Appel (2013) and Allee and Huth (2006) claim that states use litigation in such circumstances for domestic political cover. Territorial concessions are likely to be unpopular among domestic audiences. In democracies, where domestic audiences may replace policymakers via elections, governments will attempt to pass responsibility for concessions to a third party, the court or arbitral panel, in order to distance themselves from the concessions. Unfortunately, this logic displays a mixed empirical record (Gent and Shannon 2011; Mitchell, Kadera, and Crescenzi 2008). Additionally, it is unclear that passing responsibility to a judicial third party is particularly easy. Doing so requires that citizens not blame the government for agreeing to submit the territorial dispute to a court in the first place. Alternatively, citizens must believe that international law and its interpreters are to be complied with absolutely or that the government was forced into the court case by some exogenous power. In most modern democracies and in most modern territorial disputes, it is not at all clear that these assumptions hold.

Why, then, do states resort to litigation when legal focal points exist?

Policymakers must balance two competing interests in territorial claims. On one hand,

they desire to gain sovereignty over as much territory as possible. On the other, they wish to end the territorial claim in order to minimize costs associated with it. When in possession of compelling evidence for bargaining deadlock, states come to understand that some obstacle prevents, and will continue to prevent, successful bargaining towards maximal territorial gain. Thus, the second interest becomes the priority, and states will attempt to settle for the “baseline” distribution of territory. However, negotiations are difficult. Everything from the personalities of individual diplomats to conflicting interests within governments can transform even the simplest negotiated settlement into a nightmare of political intrigue.¹⁰⁵ Factions within governments can attempt to prevent the ratification of negotiated treaties by legal or extra-legal means. It is much easier for such factions to influence negotiations by agents of the state than it is for them to affect the deliberations of an international court. Alternatively, events entirely distinct from the territorial dispute, such as disagreements over trade or international incidents, may disrupt the negotiating process. Moreover, in disputes with extensive records of settlement failure and with an extant legal focal point, it is already clear that some attribute of the disputants or disputed territory is obstructing a peaceful settlement. There is no reason to assume that the obstruction will simply disappear in new rounds of bargaining. In such situations, the simplest way to avoid all of these potential obstacles and to bring about a final resolution of the dispute is to litigate, allowing a judicial third party to hand down the baseline territorial distribution in a binding legal decision. States prefer to litigate when deadlock exists, a settlement is desired, and there is a need to

¹⁰⁵ For more on the complicated nature of bargaining in territorial disputes, see Wiegand (2011).

“bracket out” obstructing influences, domestic and international, from the settlement process. Figure 4.1 outlines this theory.

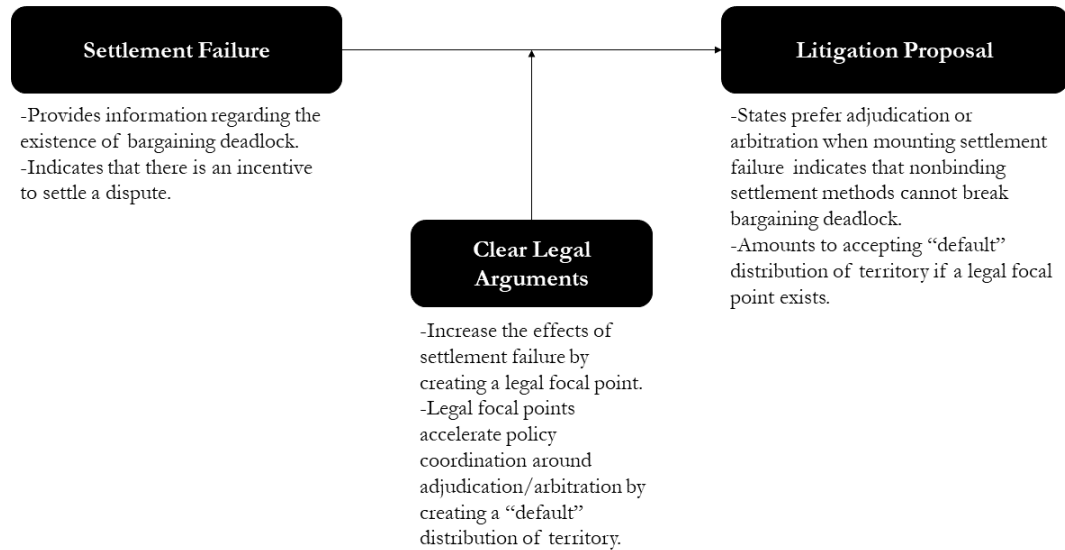
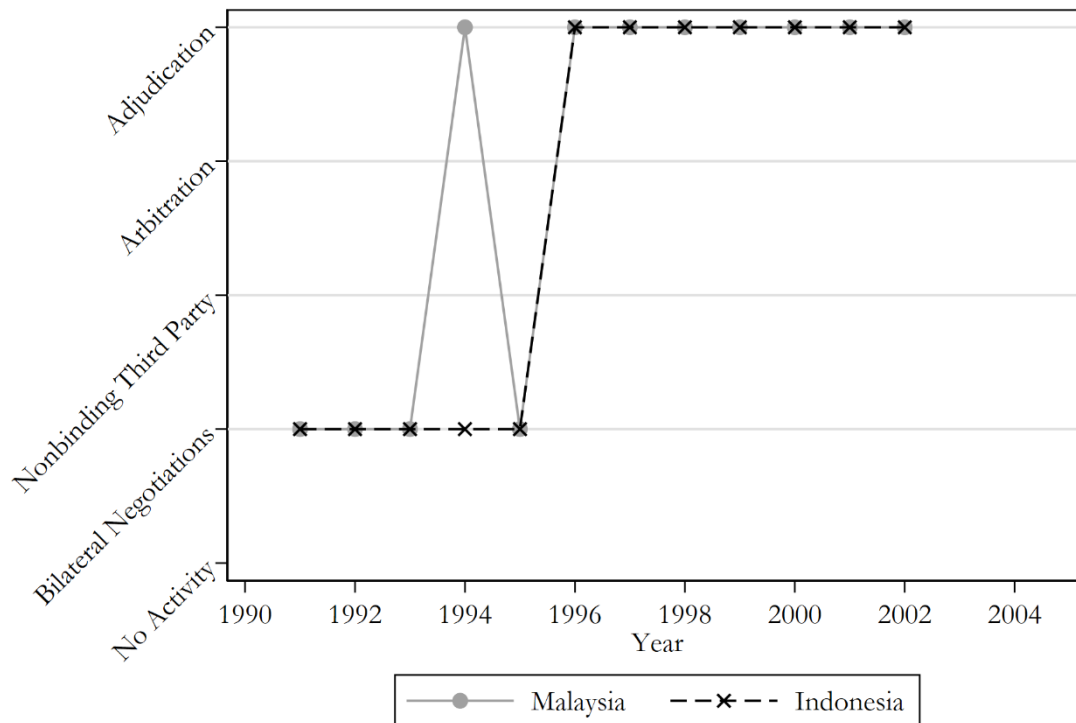


Figure 4.1: Theory of Settlement Failure, Legal Arguments, and Litigation Proposals in Territorial Disputes

One might note that this argument bears some resemblance to the original political cover logic, in that it partially depicts litigation as means of bracketing out the negative influences of domestic factions on negotiations. The difference is that my argument avoids assuming that only democracies require political cover. All governments depend on certain domestic groups to maintain power, whether those groups are formal political parties or cleavages in an electoral democracy or less formal popular or elite factions in authoritarian states. All governments are likely to face some form of opposition to conceding disputed territory. This opposition will find it easier to disrupt nonbinding peace processes by refusing to ratify treaties or by threatening to withdraw

support from the government in other issue areas. All governments may use legal settlement methods to limit the influence of domestic factions over the settlement process. Yet they will only do so when it is apparent that the clear, baseline distribution of territory suggested by international law is the best settlement that can be achieved while still limiting the costs of the ongoing territorial claim. Litigation may also be a means of “locking in” settlement preferences over time. In other words, a government may propose litigation that guarantees a peaceful settlement according to the legal baseline distribution, even if said government’s power is reduced or lost completely in the near future. This option is possible because entering into legal proceedings is relatively easy, but breaking them off is likely to incur considerable reputational and opportunity costs. In contrast, breaking off negotiations or even nonbinding third party settlement methods like mediation is relatively easy and costless. In any case, governments willing to settle for a default distribution of territory suggested by international law are likely to propose litigation as a method for minimizing the influence of domestic political factions on the settlement process and as a way of “locking in” settlement preferences for an extended period of time. Settlement failure serves as a necessary condition for this logic to work, since policymakers usually seek to bargain for maximal territorial gain before resorting to the “baseline” territorial distribution.

Figure 4.2 helps to illustrate this argument in the context of the Sipadan and Ligitan dispute between Indonesia and Malaysia. Both Haller-Trost (1995) and Huth, Croco, and Appel (2013) note that the legal arguments involved in this dispute were unambiguous. At issue were a pair of disputed islands, Pulau Ligitan and Pulau Sipadan,



*All MIDs over this claim denoted by vertical reference line.

Figure 4.2: Settlement Activity in the Sipadan/Ligitan Territorial Dispute (Malaysia vs. Indonesia), 1991-2002

both claimed on the basis of colonial agreements. Haller-Trost (1995, 4-16) shows that the Indonesian claims were known to be unlikely to hold up in court. Thus, the relative merits of the legal arguments in this case were clear. Negotiations began almost immediately after Indonesia's discovery of new Malaysian tourist facilities on Pulau Sipadan, the event that initiated the claim.¹⁰⁶ After a July 1991 meeting of policymakers proved unable to establish ownership, Malaysia and Indonesia created a Joint Working Group (JWG) that was staffed with legal and scientific experts and charged with

¹⁰⁶ Some incidents prior to 1991 hinted at the existence of a dispute, but the contention was not formally acknowledged by Malaysia or Indonesia until 1991 (Haller-Trost 1995, 4).

distributing the disputed islands bilaterally (Haller-Trost 1995, 29). Both sides hoped for a peaceful political settlement.

However, the JWG meetings also resulted in a stalemate, with both sides hardening in their respective bargaining positions. By 1994, Malaysia proposed ICJ adjudication in response to another failed JWG meeting. As per my theory, Malaysia cited settlement failure as the primary motivation behind the adjudication proposal (Haller Trost 1995, 31). Iterated attempts at bilateral bargaining had revealed, not a mutually agreeable resolution created by a reduction in private information, but an impasse that could not be removed by political means. Litigation had the potential to break this deadlock. Remarkably, in 1996, Indonesia agreed to ICJ adjudication despite its obvious legal disadvantage. Indonesia also cited settlement failure in this regard, but it also consistently reiterated that “it would be better if the matter could be settled bilaterally at a political level first.”¹⁰⁷ In other words, Indonesia hoped for a favorable political settlement, but given the evidence for an impassable deadlock, it would settle for the “baseline” distribution of territory handed down by an international court. Thus, in 1996, Malaysia and Indonesia jointly submitted their island dispute to the ICJ. Malaysia was awarded sovereignty over both islands in 2002.¹⁰⁸ Nevertheless, this case supports my theory that clear legal arguments can accelerate the “path” to litigation by creating expectations for a default distribution of territory in the event of settlement failure.

This discussion suggests the following hypothesis:

¹⁰⁷ “Legal Means If Talks Fail, Says Alatas,” *New Straits Times (Malaysia)*, June 20, 1996, 15.

¹⁰⁸ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, Judgment, I.C.J. Reports 2002, 625, available at <http://www.icj-cij.org/files/case-related/102/102-20021217-JUD-01-00-EN.pdf>.

Hypothesis 1: The effects of settlement failure on the probability of a state proposing litigation in a territorial dispute are increased when the legal claims involved are unambiguous and favor one state.

4.3 Research Design

I use a dataset covering 112 territorial claims involving 231 distinct disputants. The claim-state-year is my unit of analysis. Thus, each observation in my data corresponds to one year of a particular state's involvement in a territorial dispute.¹⁰⁹ Claim-states enter my dataset when representatives of said state formally assert title to the territory in question. No positive settlement activity is necessary. Data for these disputes and disputants is taken from the Issue Correlates of War (ICOW) project (Hensel 2001), beginning in 1945 and updated to 2015.¹¹⁰

My dependent variable is *Litigation Proposal*, a binary variable equal to 1 if government officials of a claim-state display a preference for using litigation (i.e. adjudication or arbitration) to resolve a territorial dispute and 0 if else. As such, a positive record for *Litigation Proposal* does not indicate that a state has submitted a case to a court. Instead, such a record means that the state in question visibly favors litigation in a given year, either by advancing adjudication or arbitration as a method for resolving the dispute or by working to bring litigation about. This design captures variation in preferences over time, a key element for determining the causes of the timing of litigation

¹⁰⁹ I do not resort to a dyadic research design because I am interested in the preferences of individual states and states often have conflicting preferences regarding litigation. A claim-state-year design allows me to capture this variation, while a dyadic design does not.

¹¹⁰ To avoid problems of left-censoring, disputes beginning before 1945 are not included in my sample.

proposals. Additionally, this structure includes successful and unsuccessful proposals for litigation, both of which are meaningful for ascertaining why and when states prefer litigation as a settlement alternative. Wiegand and Powell (2011) supply the data for this variable. To ensure a sufficient sample covering current disputes, I have updated this data to 2015 and added a number of new territorial claims contained within the ICOW dataset (Hensel 2001).¹¹¹

I use three independent variables to measure settlement failure. *Peaceful Settlement Attempts* measures mounting levels of settlement failure over time. It is a count variable that equals the number of claim-state-years in which any form of peaceful settlement activity was attempted by the claim-state. To illustrate, if *Peaceful Settlement Attempts* is equal to 10 in the twentieth year of a dispute involving a claim-state, then settlement activity involving the claim-state has occurred in 10 out of the 20 years. This variable allows me to gauge how much settlement failure is necessary to make litigation proposals relatively likely and to assess how legal factors alter this amount. Two additional binary variables account for the effects of attempting particular settlement methods, regardless of the number of such attempts. *Negotiations Attempted* is binary, equal to 1 if a claim state has attempted bilateral negotiations in a territorial dispute. *Nonbinding Third Party Attempted* is coded 1 if a claim-state has tried nonbinding third party settlement methods like mediation and 0 if else. These dichotomous independent variables account for the fact that the failure of particular types of settlement method may indicate that nonbinding procedures will be unable to resolve a dispute, independent of

¹¹¹ Resources employed for the update include publications by the International Boundary Research Unit (IBRU), court judgments, arbitral awards, and newspaper articles drawn from the LexisNexis database.

the number of times the procedures are tried. As per my theory, I expect the effect of all of these variables on the probability of a litigation proposal to be positive, since increasingly robust evidence for the existence of deadlock in nonbinding settlement forums strengthens the case for litigation as a “tiebreaker.” Data for this variable was also taken from Wiegand and Powell (2011), updated to 2015.

Note that this approach to measuring settlement failure is substantially different from that of the current literature (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). This is because existing works treat settlement failure as involving only failed settlement attempts occurring within a set time span. A decay function related to time is then used to weight individual settlement attempts. Additionally, Gent and Shannon (2011) separate settlement attempts that produce an intermediate agreement from unsuccessful attempts. In contrast, my use of true panel data in the place of attempt-level data allows me to measure settlement failure in a more comprehensive, chronologically sensitive fashion. Furthermore, I do not use a decay function. This choice avoids the assumption that policymakers “forget” prior settlement attempts occurring outside of a specified time span.¹¹² Finally, the binary variables measuring the failure of negotiations and nonbinding third party methods permit me to model the information available to policymakers with precision. This is because policymakers consider both the amount of prior settlement activity and which particular forums or procedures have failed to produce a resolution before deciding which methods will be tried in a given year. Thus, my

¹¹² Indeed, as Kahneman (2000) and Goertz (2006) suggest, memory of important political events is unlikely to be linear, and may prioritize information from certain events over others. My work simply assumes no decay, but future research might test different functions to ascertain the best model of political memory in territorial disputes.

nuanced approach to measuring settlement failure refines that of prior studies of litigation in territorial disputes.

I employ another independent variable to test the hypothesized interaction between settlement failure and legal arguments in territorial disputes. *Legal Arguments* is a categorical variable measuring the strength of a claim-state's legal claims to a disputed territory. This variable is coded 1 if a claim-state has weak legal claims to a disputed area and 2 if a claim-state has strong claims to said area. By "strong" and "weak," I mean that a state's legal claims are advantageous or disadvantageous relative to the state's adversary (Huth, Croco, and Appel 2013, 97-99). The merits of a state's legal position are assessed based on analyses by experts, rather than on the basis of diplomatic statements, which may be biased. The reference category for this variable, coded 0, occurs when the merits of a claim-state's legal arguments are ambiguous and unclear.¹¹³ As noted by Huth, Croco, and Appel (2013), I expect that having a legal advantage will increase the overall probability of proposing litigation. I also believe that a legal disadvantage will have a similar effect. Additionally, and more relevant for my argument, I expect that having asymmetric legal claims of any kind, weak or strong, will increase the positive effects of settlement failure due to the creation of a legal baseline distribution by principles of international law. Disaggregating this variable into *Weak Legal Arguments* and *Strong Legal Arguments* allows me to confirm that certainty, not advantage, is the decisive factor here. This variable is derived from data created by Huth, Croco, and Appel (2013).

¹¹³ While summary statistics for all variables are included in Appendix B, it is worth noting that, of the 5966 claim-state-years in my sample, 1474, or 25%, belong to states with either weak or strong legal arguments.

I include a set of control variables to minimize omitted variable bias. *Judicial Experience* captures states' past experiences in international courts. Positive experiences in the form of victories in court are said to increase a state's confidence in the fairness of adjudication or arbitration (Wiegand and Powell 2011; Powell and Wiegand 2014). *Judicial Experience* is equal to 1 if a state has had a victory in court before or during the current year, -1 if it has lost in court, and 0 if no experience exists or if a state has conflicting experiences. Data for this variable was taken from Wiegand and Powell (2011), updated to 2012. *Democracy* measures the regime type of a claim-state in a continuous manner, with higher values indicating higher levels of democracy. This variable is derived from the Varieties of Democracy (V-Dem) project's overall electoral democracy index (Coppedge et al. 2017, v. 7). Existing scholarly works contend that democratic states readily prefer adjudication and arbitration due to the normative and domestic political benefits that these methods deliver (Allee and Huth 2006; Gent and Shannon 2011). However, the empirical record of this variable is mixed, and most studies rely on dichotomous, dyadic measures of democracy that may not capture the full influence of democratic institutions on foreign policy outcomes.¹¹⁴ *Material Capabilities* measures a claim-state's material power, including its military, demographic, and economic strength. This variable comes from the Composite Index of National Capabilities (CINC) score (Singer, Bremer, and Stuckey 1972). Prior literature suggests that more powerful states prefer less formal, nonbinding settlement methods due to the risks of litigation and their greater ability to influence outcomes by political means

¹¹⁴ See, for example, Mitchell (2002), Powell (2015), Wiegand and Powell (2011).

(Lefler 2015; Allee and Huth 2006). *Global Pacific Settlement Agreements* and *Regional Pacific Settlement Agreements* are count variables measuring the number of global and regional agreements promoting the pacific settlement of international disputes to which a claim-state belongs. I anticipate that the estimated coefficient for this variable will be positive (Shannon 2009). This variable was taken from the Multilateral Treaties of Pacific Settlement (MTOPS) dataset (Hensel 2005). Lastly, *Past Fight* is a binary variable equal to 1 if a disputant has fought a war over a given territorial dispute. I derived this variable from the Correlates of War (COW) project (Sarkees and Wayman 2010).

Two variables control for the influence of time on the probability of litigation proposals. *Dispute Age* records the number of years since a claim-state entered a dispute. This variable accounts for any broad temporal trend that is independent from failed settlement attempts. The estimated influence of this variable should be positive. *Year* is equal to the calendar year in which an observation takes place. This variable is equal to 0 in 1945 and increases by one in each subsequent year in order to ease model estimation. I employ this factor to account for the effects of international judicialization and legalization, both of which occurred as judicial institutions were established and grew in the latter half of the 20th century (Alter 2014; Keohane 2002). I expect this coefficient to be positive, in keeping with the theory that more established international courts appear more reliable and unbiased than newer, untried institutions. While both variables deal with some dimension of time, they are different enough to avoid levels of collinearity that

would render my estimated coefficients unstable. These measures came from the ICOW provisional dataset (Hensel 2001).¹¹⁵

4.4 Empirical Analysis

Before proceeding any further, I must address one aspect of my analysis, namely, the small number of control variables. This is because my choice of statistical model affects my selection of controls. Because I am interested in the timing of litigation proposals within territorial disputes, I must isolate the effects of changes over time in my independent variables from effects arising from differences between claim-states. To illustrate, levels of democracy may affect the probability of litigation in a dispute in two ways. First, democratic states may litigate more often than non-democratic states. Second, democratization within a dispute may drive up the probability of litigation. Given my emphasis on timing, I require a model that can isolate this latter, within-dispute effect. One particularly widespread method for accomplishing this isolation involves the use of fixed effects regression (Allison 2009; Gelman and Hill 2008). However, this method is unsuitable for two reasons. First, it necessarily drops out all time-invariant variables from the analysis. This is problematic because legal arguments are time invariant and my theory posits an interaction between such arguments and settlement failure. Second, my dependent variable is binary. To use fixed effects with a binary dependent variable, one generally uses conditional logistic regression, but this method restricts the sample only to those subjects that experience change in the dependent

¹¹⁵ My model, known as the hybrid or “Between-Within” method, involves disaggregating these variables into between- and within-claim-state variables (Allison 2009; Bell and Jones 2015). Because of this complexity, summary statistics for all variables are placed in Appendix B.

variable over time (Allison 2009). Given the relative rarity of litigation proposals, this would limit my sample to an unworkably small subset of claim-states while introducing substantial selection bias. Thus, fixed effects regression is simply not flexible enough to test my theory.¹¹⁶

Consequently, I turn to hybrid logistic regression, also known as the “between-within” method, in order to analyze my data accurately. Hybrid panel data models estimate random and fixed effects simultaneously (Allison 2009; Bell and Jones 2015). To account for binary event data like my own, a logit transformation is easily applied within the hybrid framework. The model disaggregates each independent variable into two parts, a between-effect and a within-effect. In the context of this work, the between-effects represent the effects of differences between claim-states on the variables of interest while the within-effects represent the effects of changes in these variables within claim-states over time. To demonstrate, I argue that mounting peaceful settlement failure over time strengthens state preferences for litigation. The “within” effect of an additional failed nonbinding settlement attempt is the estimated influence of adding one additional settlement failure to a claim-state. The “between” effect of the same compares claim-states with high settlement failure to claim-states with low settlement failure.

This structure is created by taking the claim-state-level mean of each independent variable, mean-centering the original variable, and then including both in a mixed effects logistic regression with a random intercept included at the claim-state level (Allison

¹¹⁶ Random effects regression may also be used in such circumstances (Gelman and Hill 2008). However, random effects techniques make strong assumptions regarding a lack of correlation between the subject-level random effects and the regressors (Allison 2009). Furthermore, these techniques do not isolate the effects of change over time.

2009; Bell and Jones 2015; Schunck 2013).¹¹⁷ The inclusion of the claim-state-level means brackets out all confounding from time-invariant variables, observed or unobserved, on the time-variant variables of interest.¹¹⁸ Thus, there is no need to include time invariant variables like territorial salience in my model. To test my theoretical claims, I estimate two hybrid logistic regressions. The first model lacks interaction terms and serves as a baseline model for comparison. The second model interacts the effects of change over time in peaceful settlement failure (*Peaceful Settlement Attempts*, *Negotiations Attempted*, and *Nonbinding Third Party Attempted*) with the various levels of *Legal Arguments* in order to test hypothesis 1. All time-variant independent variables have been lagged by one year to improve inference. Table 4.1 contains the results from these models. Figure 4.3 contains a graphical depiction of the predicted probabilities obtained from each model on my variables of interest.

¹¹⁷ Multiple error structures were considered, including a nested design of claim-states within claims. However, more complex error structures made obtaining predictions impossible due to data sparseness. I therefore resorted to the simpler model.

¹¹⁸ Unlike conventional fixed effects logistic regression models, the hybrid method does not require dropping subjects that experience no change on the dependent variable from the sample. As long as the subject-level effects are approximately linear, the estimates are consistent. Robustness checks revealed no significant non-linearities, and inferences remained the same once higher order polynomials at the subject level were introduced. For more on this problem, see Allison, Paul, “Problems with the Hybrid Method,” *Statistical Horizons*, September 2, 2014, <http://statisticalhorizons.com/problems-with-the-hybrid-method>.

TABLE 4.1

HYBRID LOGISTIC REGRESSIONS TESTING THE INTERACTION BETWEEN
SETTLEMENT FAILURE AND THE CLARITY OF LEGAL ARGUMENTS ON A
GLOBAL SAMPLE OF TERRITORIAL DISPUTES, 1945-2012

Independent Variable	Baseline Model	S.E.	Interaction Model	S.E.
<i>Peaceful Settlement Attempts (PSA)</i>	0.207***	(0.0374)	0.183***	(0.0405)
<i>PSA X Weak Legal Arguments</i>			0.156*	(0.0845)
<i>PSA X Strong Legal Arguments</i>			0.238**	(0.102)
<i>Negotiations Attempted (NA)</i>	0.946**	(0.435)	0.0480	(0.465)
<i>NA X Weak Legal Arguments</i>			8.062**	(3.828)
<i>NA X Strong Legal Arguments</i>			8.256***	(2.697)
<i>Nonbinding Third Party Attempted (NTPA)</i>	1.825***	(0.387)	1.532***	(0.424)
<i>NTPA X Weak Legal Arguments</i>			3.154	(2.470)
<i>NTPA X Strong Legal Arguments</i>			3.443	(2.561)
<i>Weak Legal Arguments</i>	0.297	(0.743)	-1.253	(1.050)
<i>Strong Legal Arguments</i>	-0.251	(0.733)	-1.879*	(1.011)
<i>Judicial Experience</i>	-1.154**	(0.496)	-0.778	(0.484)
<i>Democracy</i>	5.898***	(1.055)	5.872***	(1.050)
<i>Capabilities</i>	112.3***	(16.73)	116.2***	(18.35)
<i>Global Treaty Commitments</i>	-0.708***	(0.193)	-0.695***	(0.195)
<i>Regional Treaty Commitments</i>	0.342*	(0.178)	0.313*	(0.183)
<i>Past Fight</i>	-0.327	(0.632)	0.183	(0.648)
Mean(<i>Peaceful Settlement Attempts</i>)	0.0235	(0.0772)	0.0156	(0.0845)
Mean(<i>Negotiations Attempted</i>)	-0.839	(0.903)	-0.824	(0.999)
Mean(<i>Nonbinding Third Party Attempted</i>)	0.673	(0.831)	1.054	(0.930)
Mean(<i>Judicial Experience</i>)	0.485	(0.683)	0.571	(0.756)
Mean(<i>Democracy</i>)	0.410	(0.991)	0.464	(1.088)
Mean(<i>Capabilities</i>)	-63.69***	(15.80)	-66.39***	(16.96)
Mean(<i>Global Treaty Commitments</i>)	0.944***	(0.343)	1.109***	(0.371)
Mean(<i>Regional Treaty Commitments</i>)	0.163	(0.110)	0.172	(0.122)
Mean(<i>Past Fight</i>)	-0.648	(1.192)	-0.770	(1.311)
<i>Year</i>	0.0228	(0.0188)	0.0304	(0.0211)
<i>Dispute Age</i>	-0.0499**	(0.0228)	-0.0526**	(0.0245)
<i>Constant</i>	-8.038***	(1.330)	-9.113***	(1.478)
Var(<i>Constant</i>)	10.856	(2.754)	14.118	(3.698)

TABLE 4.1 (contd.)

Independent Variable	Baseline Model	S.E.	Interaction Model	S.E.
N	5,966		5,966	
Claim-States	231		231	
Log Likelihood	-726.148		-702.269	
Wald Chi2	(22) 190.75		(28) 184.4	
Prob.>Chi2	0		0	
AIC	1500.295		1464.537	
BIC	1660.947		1665.352	

*** p<0.01, ** p<0.05, * p<0.1, Standard errors in parentheses.

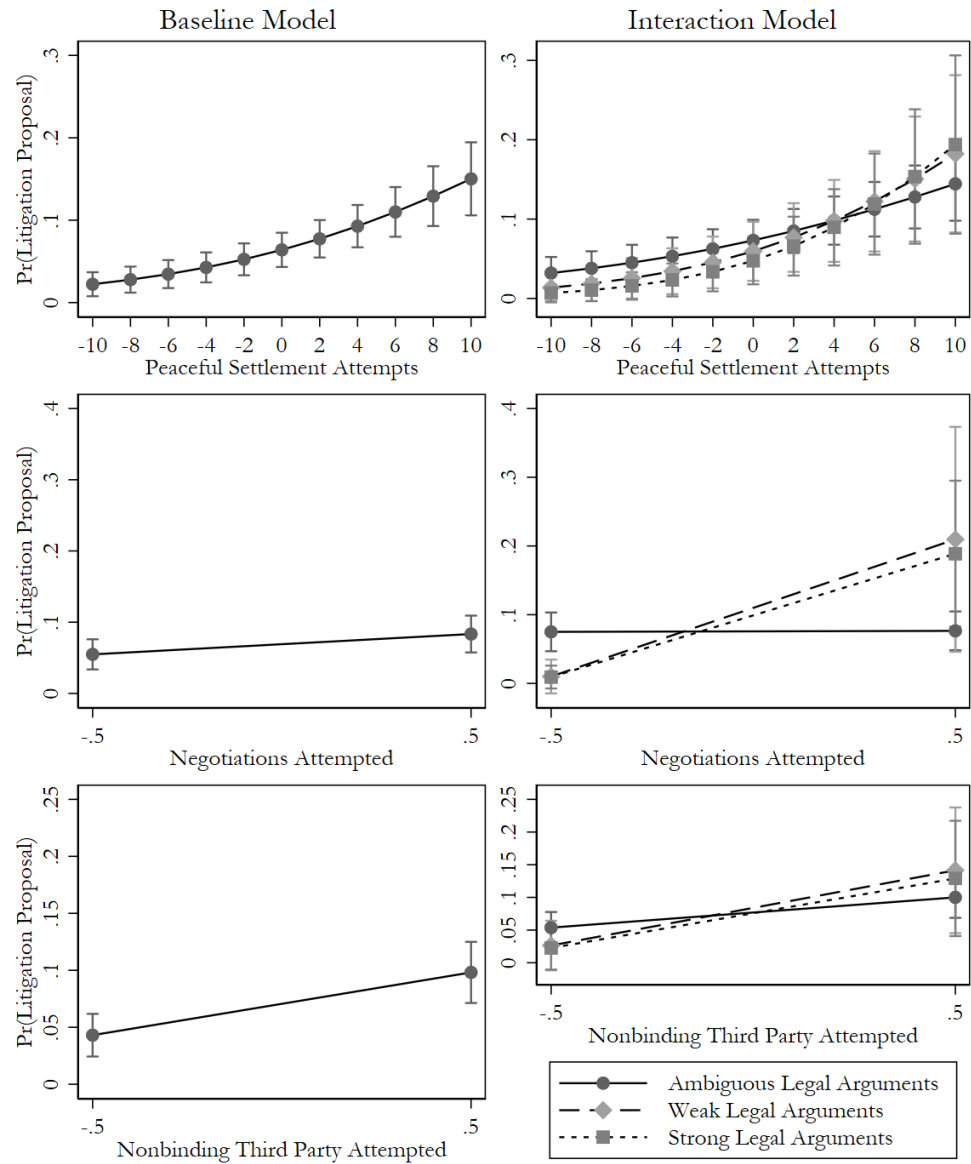


Figure 4.3: Average Marginal Predicted Probability Plots: Settlement Failure, Legal Arguments, and Litigation in Territorial Disputes, 1945-2012

My results support my claims regarding settlement failure. In the baseline model, all settlement failure variables receive coefficients that are positive and significant. This indicates that change over time in the number and types of peaceful settlement attempt increase the likelihood of litigation proposals by states. Figure 4.3 demonstrates the substantive effects of these variables. In the baseline model, a large shift of 20 failed settlement attempt-years results in an average increase of .13 (.02 to .15) in the probability of proposing litigation. A more modest shift of 8 attempt-years garners an increase of .05. To put these numbers in perspective, the overall average marginal predicted probability of a state proposing litigation is .07. This means that even a shift of .05 is a 71 percent increase from the average, and a shift of .13 is a substantial 186 percent shift upward. Smaller but significant increases occur when states try new types of nonbinding settlement method. A 1-unit shift in *Negotiations Attempted* results in an average shift of .03 (43 percent of the average).¹¹⁹ An identical shift in *Nonbinding Third Party Attempted* results in a larger increase of .06 (86 percent). These statistics support a number of conclusions. First, while the numbers and types of failed settlement attempts both achieve statistical significance, only large numbers of failed attempts can make litigation even remotely likely on their own. However, it should be remembered that my models are additive. A hypothetical state that has attempted both bilateral negotiations and nonbinding third party methods will receive an average boost of .09 in the probability of proposing litigation, all of which is added to the effects of increasing numbers of

¹¹⁹ Although several dichotomous variables are mean-centered in my models, all shifts on these variables are 1 unit in length. I depict a -.5 to .5 shift in Figure 4.3 because such a shift lies roughly in the middle of the distribution of values and is a useful summation of the effects over the entire sample.

settlement attempts. Thus, settlement failure, on the whole, is a principal factor in determining when states will propose legal settlement methods in territorial disputes.

Hypothesis 1 receives significant, though partial, support from my results. All theorized interaction effects are positive, indicating that the influence of settlement failure on the likelihood of litigation proposals is magnified when a state is at a legal advantage or disadvantage in a dispute. However, only the interactions for *Peaceful Settlement Attempts* and *Negotiations Attempted* reach conventional levels of statistical significance.¹²¹ Neither interaction effect involving *Nonbinding Third Party Attempted* is significant, and the main effect of *Negotiations Attempted* in the absence of clear legal arguments is similarly insignificant.¹²² These findings suggest some preliminary conclusions. First, because all estimated interaction effects are positive, there is some evidence to suggest that clear legal claims magnify the effects of settlement failure regardless of whether a state has weak or strong legal arguments. Second, the differences in magnitude between each pair of interaction effects appears rather small. This implies that the separation between states with advantageous claims and states with weak claims is much smaller than the distance between either and states with ambiguous legal claims. Fourth, I am unable to confirm that clear legal claims alter the effect of attempting nonbinding third party methods in any way. This result may be due to the unique nature

¹²¹ A model with claim-state- and claim-level random intercepts pushed the interaction between *Peaceful Settlement Attempts* and *Weak Legal Arguments* into significance. Because this nested random effects model is a better fit to the data, this result supports my theory. For the reasoning behind the use of a simpler model, see note 117.

¹²² Because this model involves interaction terms, the insignificant “main effect” for *Negotiations Attempted* should be interpreted in the following way: in the presence of ambiguous legal arguments, attempting negotiations has no noticeable effect on the probability of litigation proposals.

of conciliation, mediation, and other nonbinding third party methods, many of which involve bringing in an outside state or organization to manage the territorial conflict. External parties may have their own preferences regarding the use of legal settlement methods, and some mediators may even suppress the possibility of litigation to manage a dispute on their own.

Figure 4.3 supports these inferences. For *Peaceful Settlement Attempts*, a large shift of 20 prior peaceful settlement attempt-years increases the probability of a litigation proposal by .11 (.03 to .14), on average, when legal claims are ambiguous. This is a 157 percent increase from the average of .07. Compare this to an increase of .17 (.01 to .18, or 257 percent from the average) when a state's legal claims are weak and an increase of .19 (.007 to .19, or 271 percent) when a state's legal claims are strong. Clear legal claims substantially increase the effects of large numbers of prior settlement attempts on the probability of proposing litigation. However, the differences only appear notable after particularly large shifts in the number of prior settlement attempt-years. Note also that strong legal claims have a greater magnifying effect than weak legal claims. For *Negotiations Attempted*, the magnifying effect of clear legal claims is even more impressive. The effect of attempting bilateral negotiations is effectively zero (.001) when ambiguous legal arguments are involved. This means that the failure of negotiations to resolve a dispute initially does little to encourage the use of legal settlement methods when no legal focal point exists. Contrast this with when legal arguments are clear: the average effect of trying negotiations when legal arguments are advantageous is .18. The same effect when legal claims are weak is .2. Thus, attempting negotiations in the presence of a legal focal point substantially increases the probability of proposing

litigation, while the same cannot be said of attempting negotiations in the absence of such a focal point. Finally, Figure 4.3 shows that clear legal arguments do increase the effects of attempting nonbinding third party methods, even if this interaction is statistically insignificant. The average effect of attempting these methods in the presence of ambiguous legal claims is .05, compared with .12 for weak legal arguments and .11 for strong claims. The estimated effect is smaller than that found for the other settlement failure variables, but it is still substantial given the relative rarity of litigation proposals. Consequently, there is some inconclusive evidence that the effects of attempting nonbinding third party methods on the probability of litigation proposals are magnified by legal focal points.

Among the control variables, *Capabilities* and *Global Treaty Commitments* are significant at the within-claim-state and between-claim-state levels. This indicates that changes in material power and global commitments to the pacific settlement of disputes, along with between-state differences in these variables, all significantly alter the probability of a litigation proposal. Surprisingly, the within-effects for *Global Treaty Commitments* are negative, meaning that agreeing to new formal commitments to the peaceful settlement of disputes at the global level decreases the probability of proposing legal settlement methods. The between-effects are positive, indicating that claim-states with more formal global commitments are more likely to try litigation than claim-states with fewer such commitments. This finding only partially matches the expectations of the established literature (Shannon 2009). The negative within-effects may indicate that agreeing to new global commitments often involves agreeing to nonbinding mediation or conciliation. Alternatively, new global commitments may be used as a tactic to improve a

state's bargaining leverage in negotiations. Interestingly, *Capabilities* returns a positive coefficient at the within-claim-state level in both models and a negative coefficient at the between-claim-state level in both models. In other words, increases in material power over time increase the probability of litigation proposals, while more powerful states are less likely than less powerful states to propose the use of binding settlement methods. At the very least, this finding suggests that more research is needed on the topic of how power shifts alter the calculus of states seeking to resolve territorial disputes peacefully.

Judicial Experience is significant and negative at the within-claim-state level. This suggests the counterintuitive conclusion that new positive experiences in international courts and arbitral panels actually discourage future proposals for litigation. However, this result is not consistent across both models. *Regional Treaty Commitments* is significant and positive at the within-claim-state level in both models, matching the literature's expectation that new regional treaty commitments to the peaceful settlement of disputes should encourage the use of formal legal dispute settlement venues (Shannon 2009). *Time* is significant and negative in both models, demonstrating that there is a slight downward trend in the probability of litigation proposals as disputes age, once other variables have been accounted for. Finally, it is worth remarking on the fact that the effects of *Strong Legal Arguments* and *Weak Legal Arguments* are insignificant in the baseline model.¹²³ This result indicates that the relative strength and clarity of legal arguments has no detectable effect on the probability of litigation proposals, independent

¹²³ In the interaction model, the main effects for my legal arguments variables represent the effects of legal arguments in the complete absence of settlement failure. These effects are not particularly informative, though they make sense given that no state is likely to propose litigation without nonbinding bargaining, even in the presence of a legal focal point.

of settlement failure. Indeed, the estimated effect of having strong legal claims is negative. All of this suggests the conclusion that legal focal points primarily affect preferences for legal settlement methods via changing how states view the failure of nonbinding attempts at peaceful dispute resolution. Simply having a legal focal point is not sufficient; states must also have experienced enough settlement failure to make the baseline legal distribution of territory more attractive than maintaining a costly and intractable disagreement.

An examination of the Pearson and deviance residual scores for the observations in my sample shows three consistent outliers, each of which are badly predicted litigation proposals. These outliers are a 1962 proposal by Thailand in the Preah Vihear dispute, a 1966 proposal by the United Kingdom in the Gibraltar dispute, and a 1961 proposal by Chile in the Antofagasta dispute. In each model, these proposals receive a predicted probability of less than .001. These low predictions are quite sensible, however. The proposal in the Preah Vihear dispute involved Thailand finally agreeing to a previous proposal by Cambodia, which had instituted legal proceedings at the ICJ. Furthermore, Thailand physically controlled the disputed area, and Cambodia had resorted to the ICJ with very little prior settlement activity by taking advantage of Thai acceptance of the ICJ's compulsory jurisdiction.¹²⁴ The 1966 UK proposal in the dispute over Gibraltar

¹²⁴ *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Preliminary Objections, Judgment of 26 May 1961: I.C. J. Reports 1961, 17; *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962: I.C. J. Reports 1962, 6. UN member states may sign on to Article 36(2) of the ICJ statute, which subjects them to the ICJ's compulsory jurisdiction. Doing so allows establishes the ICJ's jurisdiction to hear any cases that are not explicitly excluded by a state's reservations. These declarations, along with the inclusion of compromissory clauses establishing ICJ jurisdiction in individual treaties, are the only way that ICJ jurisdiction may be established in the absence of an ad hoc agreement negotiated between disputants (von Glahn and Taulbee 2013).

came on the heels of a number of proposals for litigation by the UK, including the settlement of the Ecrehos and Minquiers dispute with France.¹²⁵ Moreover, the British proposal occurred in response to the failure of four rounds of negotiations with Spain in 1966 that resulted in the closure of the Spanish border with Gibraltar to all but pedestrian traffic (Gold 2005, 17). Thus, settlement failure explains this proposal well, though it occurs relatively early in the modern dispute.¹²⁶ Regarding the Chilean proposal in 1961, this litigation proposal involved Chile proposing arbitration after it had resolved to begin a water diversion project in the disputed area (St. John 1994, 20). The proposal came in response to a Bolivian petition to the OAS to place sanctions on Chile for its failure to cease development operations until the matter had been resolved. Consequently, the proposal may have been less than serious, functioning more as a symbol of Chile's peaceful intentions than as a serious attempt at dispute resolution. This proposal was not accepted, and Bolivia broke diplomatic ties with Chile soon after over the impasse. In any case, omitting these outliers does not change any of the inferences described above.

Figure 4.4 is a line plot depicting predicted probabilities for three major territorial disputes that ended in litigation, plotted against *Dispute Age*.¹²⁷ Connecting my model estimates to particular disputes illustrates the importance of settlement failure and the advantages of clear legal arguments for the selection of adjudication and arbitration. The

¹²⁵ *The Minquiers and Ecrehos Case*, Judgment of November 17th, 1953: I.C.J. Reports 1953, 47.

¹²⁶ The U.K. never formally proposed litigation again (Gold 2005). However, the idea of ICJ adjudication lived on in several proposals from the semi-autonomous regional government of Gibraltar, including one as late as 2001 (Gold 2005, 271).

¹²⁷ *Dispute Age* is used as a reference point to demonstrate the importance of settlement failure compared to the simple passage of time. Bahrain is not included in Figure 4.4 due to missing data from the V-Dem project's electoral democracy index (Coppedge et al. 2017).

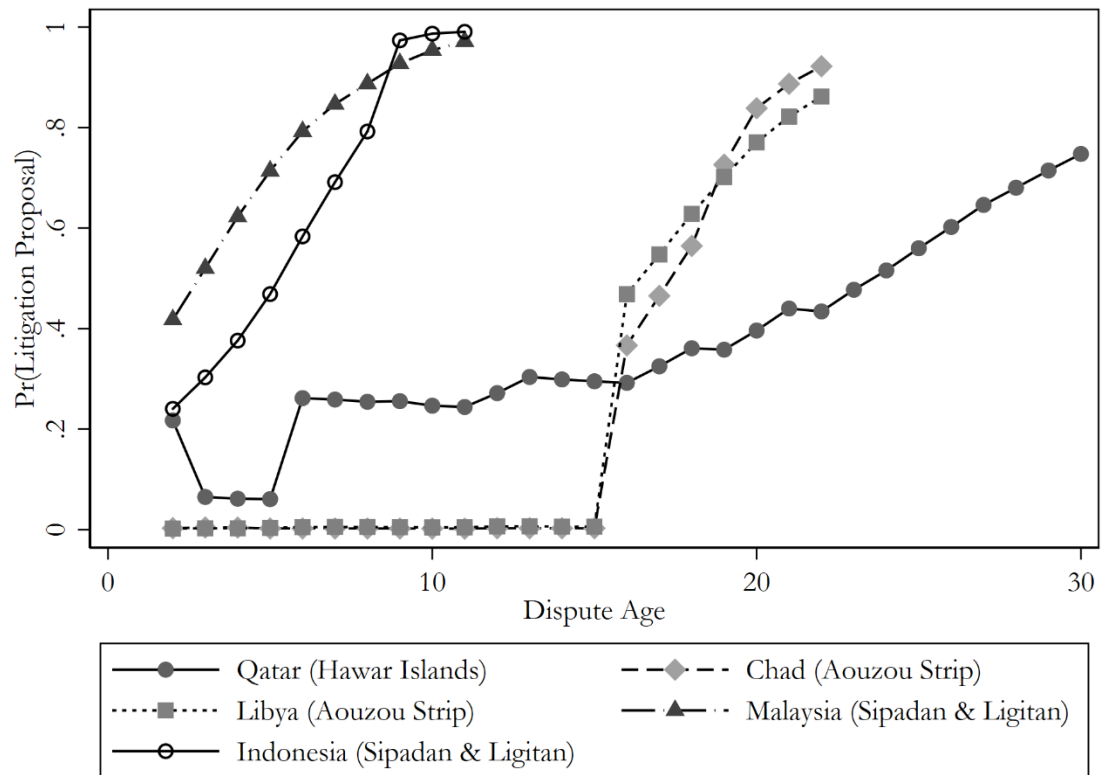


Figure 4.4: Line Plot: Settlement Failure, Legal Focal Points, and Litigation Proposals in Three Major Territorial Disputes

Hawar Islands dispute was noted for its legal ambiguity, and the ICJ proceedings that settled the matter are the longest on record (Plant 2002, 198; Wiegand 2012, 79).¹²⁹

Figure 4.4 shows that Qatar’s “path” to litigation in the dispute was gradual. The initial drop in Qatar’s predicted probability occurs because Qatar made a pair of global treaty

¹²⁹ The dispute involved title to both onshore (Zubarah) and offshore (the Hawar Islands) territories, along with a complex maritime delimitation (Wiegand 2012). The final decision of the Court had to be made on the basis of international customary law because neither Qatar nor Bahrain had signed or ratified UNCLOS, the primary modern instrument governing international maritime law (Plant 2002). For more on the Hawar Islands case, see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment, I.C.J. Reports 2001, 40. For more on UNCLOS, see http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

commitments in 1973, a shift that is associated with a negative effect by my model.¹³⁰

Soon after, a mediation attempt by Saudi Arabia causes the probability to increase again.

The plodding track towards litigation is due almost entirely to increases in *Peaceful Settlement Attempts*. This finding supports the idea that, in the presence of ambiguous legal arguments, a lack of legal focal points makes policy coordination around litigation difficult, though not impossible.

Contrast this steady path with that of the Sipadan and Ligitan dispute, discussed in detail above. Indonesia claimed these islands on the basis of multiple agreements made between the Dutch and British colonial regimes in the nineteenth century, as well as on the basis of an alleged 1969 agreement with Malaysia to discuss ownership of the islands at a later date (Haller-Trost 1995, 4-13). As Haller-Trost (1995, 11-16) notes, these claims were weak, given that Malaysian sovereignty was supported even by the agreements in question and that long-running state practice placed both islands firmly under the control of the British colonial administration and their successor, the modern Malaysian state. Thus, it was clear from the outset that international law supported the Malaysian claim. In keeping with my theory, the predicted probability for both states is high at the outset because Malaysia and Indonesia have large numbers of global treaty commitments at the claim-state-level. Large increases in the probabilities for both states are due mostly to the failure of new settlement attempts in the presence of a legal focal point, though Indonesia receives a boost from increases in levels of democracy. This matches Haller-Trost's (1995, 29) depiction of the negotiations in this dispute, which

¹³⁰ Qatar joined the Organization of Islamic Cooperation (OIC) and the Non-Aligned Movement via the 1955 Bandung Principles in 1973 (Hensel 2005).

almost immediately involved “experts in law and hydrography.” Malaysia justified its attempts to submit the dispute to ICJ adjudication by stating that “...[s]ince it is very clear that both parties cannot accept each other’s claims and cannot reach a decision, it is natural that we go to a third party.”¹³¹ While Indonesia resisted litigation for a time due to its obvious legal disadvantage, it eventually agreed to ICJ adjudication in 1996.¹³² As such, discussions between Indonesia and Malaysia centered on questions of law and delimitation, indicating the presence of a clear legal focal point. Soon after deadlock set in, Malaysia cited settlement failure as the primary reasoning behind its proposals for litigation. Indonesia gave in to these proposals once it became clear that its preference for nonbinding settlement methods could not produce a definitive resolution. Therefore, a legal focal point, combined with settlement failure, led to litigation in this case.

The Aouzou Strip dispute between Chad and Libya took a different, though related, course to litigation. Libya claimed the 600-mile-long strip of barren land on the basis of religious and cultural ties between the Libyan state’s historical antecedents and the inhabitants of the disputed area (Ricciardi 1992, 305; Joffé 1987, 24, 27). In contrast, Chad relied on the modern Western conception of territorial sovereignty by claiming the

¹³¹ Malaysian Prime Minister Mahathir Mohamad as quoted in *Straits Times*, 14 September 1994. Malaysia’s proposal litigation in the Sipadan and Ligitan dispute occurred in tandem with litigation in another dispute, that over Pulau Batu Puteh with Singapore (Lim 2005). Lim (2005, 340) depicts Malaysia’s preference for litigation as a “low risk legal strategy” because the islands in question were not permanently inhabited or particularly valuable economically. Malaysia may also have preferred litigation to submitting the dispute to the ASEAN High Council, which consisted of a number of states that held territorial claims against Malaysia (Kahler 2000, 564).

¹³² *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, 625, available at <http://www.icj-cij.org/files/case-related/102/102-20021217-JUD-01-00-EN.pdf>.

territory based on effective control and the principle of *uti possidetis juris*.¹³³ Chad's claims were consistent with the law applied by modern international judicial institutions, while Libya's were not. This reality created clear legal arguments, to Chad's advantage, around which a focal point eventually emerged. The predicted probabilities in Figure 4.4 spike around 16 years after dispute onset because in 1987 a mediation attempt by the O.A.U.-sponsored Bongo Committee occurred following a ceasefire ending a long war between the two states (Ricciardi 1992, 379-380). In addition to political concerns, the committee examined cartographic and historical evidence in an attempt to clarify the positions of the two sides. The mediation itself failed to resolve the territorial dispute, but another round of failed talks in 1988 resulted in a Chadian proposal to submit the dispute to the ICJ. Libya rejected this proposal. However, in 1990, both states signed the Algiers Accord that required one more round of talks, then automatic litigation in the ICJ if these talks failed (Ricciardi 1992, 380-381). The talks failed, and the dispute was submitted to ICJ adjudication in 1990. In the terms of my argument, settlement failure, in the guise of multiple rounds of mediation and negotiation following the 1987 ceasefire, drove Libya and Chad to propose litigation. The reasonably clear legal arguments involved in the case seem to have accelerated this result, particularly because Chad's advantage drove it to propose litigation first. Once an ICJ decision was on the table, Libya agreed to the proposal rather quickly due to exhaustion from 16 years of occupying the disputed territory without result and the effectiveness of the ICJ in resolving territorial matters

¹³³ The principle of *uti possidetis juris* mandates that the borders used by colonial powers become the borders of their independent successor states (Shaw 2014, 380). It was first adopted by the newly independent states of the former Spanish Empire in the Americas to reduce territorial conflict.

definitively (Ricciardi 1992, 382). In the language of my theory, Libya settled for the baseline distribution of territory.

4.5 Conclusion

International law is best at promoting peace when it is clear and unambiguous (Ginsburg and McAdams 2004; Huth, Croco, and Appel 2013). Focal points created by clear legal arguments make policy coordination around international adjudication and arbitration easier in territorial disputes. However, legal focal points also speed up the bargaining process by which states arrive at litigation as the preferred settlement method. This chapter posits that proposals for litigation in territorial matters are driven by settlement failure, or the inability of nonbinding settlement methods to resolve a dispute. The effects of settlement failure on the probability of litigation proposals combine with the nature of the legal claims to the territory in question to explain when litigation proposals become likely. When legal arguments are ambiguous, as in the Hawar Islands dispute, the “path” to litigation is slow because states have difficulty establishing the baseline concessions mandated by international law. When legal arguments are clear, these baseline concessions are predictable, making litigation into an attractive alternative if nonbinding settlement alternatives are ineffective. This theorized interaction represents a significant and original contribution to the territorial disputes literature.

My focus on timing and interactions between settlement failure and legal arguments improve scholarship’s ability to explain when litigation proposals are likely in ongoing territorial disputes. Settlement failure may be the “engine” that drives litigation timing, but intervening factors like legal arguments can change how states process

settlement failure substantially. My work is also of use to policymakers seeking to settle territorial claims or to increase the attractiveness of international judicial institutions to states. International courts and arbitral panels are effective methods of dispute resolution, but only when both sides agree that political settlement methods cannot break the bargaining deadlock. Legal clarity accelerates this agreement by establishing clear expectations for the eventual distribution of territory. Thus, any act or instrument that increases legal certainty surrounding the acquisition of territory can increase the likelihood of peaceful dispute resolution, even in deadlocked disputes. Consequently, my theory and evidence suggest that international lawyers and policymakers can increase the use of legal settlement methods in international disputes by clarifying the law and creating broad legal instruments, similar to UNCLOS, that proactively create legal focal points suitable for policy coordination. Although legal clarification and codification can create resistance from some quarters, they can also reduce conflict substantially by creating regular expectations and settlement processes for states involved in disagreements. In this way, peace may be promoted and conflict reduced by international law.

CHAPTER 5:

JUDICIAL EXPERIENCE AND THE TIMING OF LITIGATION

5.1 Introduction

In recent years, scholars of territorial conflict have increasingly turned their attention to the puzzle of litigation. Why do states make use of adjudication or arbitration to resolve territorial disputes? After all, the question of why states might entrust vital territorial matters to an impartial but inherently unpredictable judicial third party is a difficult one, particularly in a world where international judicial decisions lack enforcement. The literature finds that legal arguments, regime type, material capabilities, treaty commitments, past conflict, territorial salience, and even domestic legal institutions are all significant explanatory factors behind the incidence of litigation in territorial disputes (Allee and Huth 2006; Hensel 2001; Hensel et al. 2008; Huth, Croco, and Appel 2013; Mitchell 2002; Powell 2015; Wiegand and Powell 2011). These studies share a common theoretical framework. They argue that a set of rational incentives, like political accountability or an affinity with the legal principles of an international court, can occasionally outweigh the risks of international litigation. Other factors, like power, mean that states have no need to resort to binding settlement methods. Essentially, a dynamic set of competing incentives produces preferences for or against litigation within territorial claimants.

Despite insights provided by the scholarship, several questions remain unanswered. Characteristics like regime type, territorial salience, and domestic legal systems rarely change rapidly over time. This means that they are, by definition, unable to explain when states propose litigation within ongoing territorial disputes. Consequently, while studies such as Allee and Huth (2006), Hensel (2001), and Powell (2015) tell us much about which states and dyads are likely to pursue adjudication or arbitration, they say very little about when a given state will prefer to litigate and when it will negotiate instead. This question of the timing of preferences for litigation is both fundamental and policy relevant. Examining temporal dynamics can strengthen scholarly understanding of peaceful dispute resolution as a coherent process. But such an analysis may also provide insight into how the attractiveness of litigation might be enhanced, a laudable goal given the stellar success rate of international judicial institutions in territorial matters.¹³⁴

Among policymakers, perhaps the most commonly cited explanation for the timing of litigation proposals is settlement failure, that is, the inability of nonbinding, non-legal settlement methods to resolve a territorial dispute (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). Settlement failure provides information regarding the existence of bargaining deadlock. As the “quantity” of such information increases with

¹³⁴ Mitchell and Hensel (2007) find that, of all territorial cases submitted to the International Court of Justice (ICJ) since its foundation in 1946, only one, the dispute over the Gabčíkovo-Nagymaros dam project between Slovakia and Hungary, experienced full noncompliance at the time of publication. Partial noncompliance, eventually resolved, was observed in three other cases. Of the five ICJ decisions involving territory since 2007, only one, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, has experienced substantial noncompliance (Jane’s Country Risk Daily Report 2013).

failed rounds of negotiations and nonbinding third party methods, so does the attractiveness of litigation as a surefire method for breaking the impasse. Hensel et al. (2008), Lefler (2015), and others note this trend, but relegate it to the status of a control variable. I submit that it is the primary engine determining state preferences for binding settlement methods. Furthermore, I improve upon the literature's treatment of settlement failure by measuring it as a multidimensional concept. The number of prior peaceful attempts at settlement does provide substantial information to states. However, types of settlement procedure attempted, including bilateral negotiations and nonbinding third party methods like mediation, also inform states about the effectiveness of nonbinding settlement methods, independent of the number of times a particular method is tried. Thus, by placing settlement failure at the center of my theoretical claims and by measuring it as a multidimensional concept, I advance our ability to explain when states resort to international judicial institutions for the peaceful settlement of territorial disputes.

Yet my most significant contribution lies in theorizing an interaction between past experiences in judicial fora and settlement failure. Wiegand and Powell (2011) and Powell and Wiegand (2014) demonstrate that prior victories in international courts increase the likelihood of a state proposing litigation again. Prior defeats have the opposite effect, signifying that a state's win-loss record in international courts conditions its beliefs regarding the probability of future success. Applied to my settlement failure framework, this theory suggests that states with positive records in international judicial institutions should propose litigation in response to less settlement failure than states with no or negative past experiences. By boosting a state's optimism about litigation, past

victories in court should accelerate the “path” to litigation in present contentions. Thus, judicial experiences combine with the dynamics of settlement failure to produce proposals for litigation.

In this chapter, I first outline my theory of the timing of litigation, placing special emphasis on the interaction between settlement failure, judicial experiences, and litigation preferences. I then test my theoretical claims on a new panel dataset covering a wide sample of interstate territorial claims, 1945-2011. The results are somewhat surprising. My analysis supports the centrality of settlement failure in determining the timing of proposals for litigation, but the role of judicial experience is less clear. There is a complex relationship between settlement failure and judicial experience, and some of my findings appear to contradict established theories directly. The conclusions suggested by my findings are three. First, prior judicial rulings affect only a minority of territorial disputes, and I detect no effect for past judicial experiences that is not heavily dependent upon levels of settlement failure. Second, rulings directly related to or close in time to ongoing disputes substantially do affect the “path” to litigation. Yet tactical dynamics such as delays or the partial resolution of a continuing disagreement appear more to blame for the significance of judicial experiences than the conflation of past victory with future success.

5.2 Past Experiences, Settlement Failure, and Litigation

Before turning to my substantive argument, I must define several terms. By “litigation,” I mean the use of a permanent international court, such as the International Court of Justice (ICJ), or an ad hoc arbitral panel to resolve a dispute by legally binding

decision. International courts adjudicate disputes (“adjudication”), while arbitral panels arbitrate (“arbitration”). While the procedures by which both methods are convened are different, the procedures for the presentation of evidence, the formulation of a ruling, and the legally binding nature of the final decision under international law are effectively identical.¹³⁵ Litigation can be classified as a peaceful dispute settlement method, alongside bilateral negotiations and nonbinding third party methods. In bilateral negotiations, representatives of disputants meet to discuss a matter in the absence of a third party. For nonbinding third party methods, the representatives are accompanied by a third party empowered to suggest resolutions to a dispute but not to rule in a legally binding manner. A litigation proposal involves the visible expression of a preference for adjudication or arbitration by authorized representatives of a state, whether it be in the submission of a case to an international court, in the maintenance of an ongoing case, or an invitation extended to other disputants (Wiegand and Powell 2011).

I limit my universe of cases to disputes between states involving title to land (“interstate territorial disputes”). When two or more states disagree over who owns the rights to govern and dispose of a particular piece of land, a territorial dispute exists. Territorial disputes have fueled conflict between political entities for centuries, and they remain a significant source of acrimony between states in the twenty-first century (Goertz, Diehl, and Balas 2016). Moreover, because they involve land, a variably-divisible good that underlies the authority of the modern state while providing significant

¹³⁵ Adjudication makes use of a permanent international court with established procedures and personnel. Arbitration is an *ad hoc* process that requires states to agree upon the procedures and judges to be employed in a preliminary agreement known as a *compromis* (Shaw 2014). However, once this agreement is in place, an arbitration in territorial matters proceeds almost identically to a formal international court case.

economic, strategic, and identity-based value, territorial disputes are worthy of study in isolation from less-pressing disagreements.¹³⁶

There is a large body of scholarship that deals with the causes of conflict over territory.¹³⁷ A related literature discusses the causes of the peaceful resolution of territorial disputes.¹³⁸ On the topic of litigation, Allee and Huth (2006), Huth, Croco, and Appel (2013), Gent and Shannon (2011), Lefler (2015), Hensel et al. (2008), Wiegand and Powell (2011), Powell (2015), Owsiak and Mitchell (2017) and others propose a host of explanatory factors, such as democracy, the relative strength of legal arguments, territorial salience, domestic legal systems, and past experiences, all of which are correlated with proposals for litigation. However, these studies are limited in their ability to explain the timing of litigation proposals. Timing is important in territorial disputes for two reasons. First, such disputes are often lengthy, spanning years and even decades.¹³⁹ Simply declaring that one territorial dispute is likelier than another to experience litigation proposals may actually provide very little information regarding when a litigation proposal may occur and what process might bring it about. Second, attention to

¹³⁶ Land is “variably divisible” in that some disputed territories are viewed as divisible while others are not (Grossman 2004). For more on the relationship between territory and the modern state, see Anderson (1996). For the importance of territorial value and salience in territorial disputes, see Hensel et al. (2008) and Huth (1996).

¹³⁷ See, for instance, Senese and Vasquez (2008); Tir (2010); Vasquez (1993); Wiegand (2011).

¹³⁸ See, for instance, Allee and Huth (2006), Gent and Shannon (2011), Huth (1996), Hensel (2001), Lefler (2015), Mitchell (2002), Owsiak and Mitchell (2017), Powell (2015), Powell and Wiegand (2014), Shannon (2009), Wiegand and Powell (2011).

¹³⁹ A number of territorial disputes in Latin and South America that are either in progress or have been resolved in the past few decades began in the 19th century (Hensel 2001). This includes the long-running border dispute between El Salvador and Honduras, which was rooted in vaguely defined 18th century colonial boundaries. For more on this dispute, see *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, ICJ Judgment of 11 September 1992, available at <http://www.icj-cij.org/files/case-related/75/075-19920911-JUD-01-00-EN.pdf>.

timing provides more satisfying and useful explanations for phenomena than stopping at mere incidence. Consider possible explanations for an automobile accident. One could cite studies demonstrating that the age of the drivers or their average speed increases the likelihood of a collision. But a more satisfying account of the event at hand would also attend to the sequence of events that brought the accident about. Perhaps one driver consumed an alcoholic beverage only fifteen minutes prior to the wreck, or maybe the other driver answered a call on a cell phone just minutes before the event in question. Examining common events that immediately precede the outcome of interest provides much more satisfying and relevant explanations than analyzing broad, systemic trends in isolation.

Consider democracy as an explanatory factor behind territorial litigation. Two theories have been advanced to explain why democracies are more likely to litigate their territorial disputes. First, democratic policymakers may share normative commitments to peaceful, formal dispute resolution (Mitchell 2002). Second, litigation by a third party may provide “political cover” for accountable policymakers seeking to make costly territorial concessions (Allee and Huth 2006; Gent and Shannon 2011). These arguments are useful for explaining why democratic states litigate more than others. But can they provide insights regarding when a state, democratic or not, is likely to propose litigation within an ongoing dispute? Regime type rarely changes rapidly, and most states involved in territorial disputes are, at best, imperfect democracies (Coppedge et al. 2017). The former means that, for many disputes, democratic institutions cannot explain when a state is likely to propose adjudication or arbitration. The latter constricts the validity of these democratic arguments to an admittedly small subset of states, most of which settled their

territorial disagreements prior to the latter half of the twentieth century (Hensel 2001). Similarly, the strength of legal arguments, territorial salience, domestic legal systems, past experiences, and even material capabilities change infrequently, if at all, over time. These factors provide substantial information regarding which disputes are likely, generally speaking, to experience adjudication or arbitration, but they have difficulty accounting for the temporal processes that bring litigation about. The aim of this chapter is to identify these temporal processes and to provide an answer to the puzzle of when states are likely to try litigating within ongoing territorial disagreements.

5.2.1 Settlement Failure

One of the most common explanations presented by policymakers for litigation proposals is settlement failure, defined as the inability of nonbinding settlement methods like negotiations or mediation to resolve an ongoing dispute. In a dispute with Indonesia over the islands of Pulau Sipadan and Pulau Ligitan, Malaysian Prime Minister Mahathir Mohamad explained his state's preference for ICJ adjudication: "...[s]ince it is very clear that both parties cannot accept each other's claims and cannot reach a decision, it is natural that we go to a third party."¹⁴⁰ In essence, nonbinding negotiations between the two parties had become deadlocked, and Malaysia believed that only the decision of an impartial third party could overcome the obstruction. Wiegand (2012), writing on the Hawar Islands dispute between Qatar and Bahrain, notes a similar dynamic. Qatar and Bahrain only seriously considered ICJ adjudication after both bilateral negotiations and nonbinding mediation by Saudi Arabia failed (Wiegand 2012, 85). Indeed, Qatar chose to

¹⁴⁰ Malaysian Prime Minister Mahathir Mohamad as quoted in *Straits Times*, 14 September 1994.

submit the dispute to the ICJ unilaterally “due to the continued lack of progress made by regional mediation” (Wiegand 2012, 85). These cases, along with many others, show the failure of nonbinding settlement methods due to bargaining deadlock as a key determinant of state preferences for litigation.¹⁴¹ Moreover, settlement failure is, by its very nature, a time-variant process because rounds of nonbinding settlement attempts occur in response to the initiation of a dispute and their failure can mount over the course of a dispute. Consequently, I argue that settlement failure is a vital determinant, not simply of whether litigation proposals occur in a dispute, but of when they occur, as well.

To be more precise, settlement failure provides policymakers with information regarding the existence of bargaining deadlock. The very act of initiating nonbinding settlement attempts indicates that a state has an interest in resolving a territorial dispute. However, as the number of prior rounds of negotiations, mediation, conciliation, and the like increase, it becomes increasingly apparent that some attribute of the disputed territory or the disputants themselves is preventing the formulation of a definitive settlement. States facing such circumstances have four options. First, they may cease attempts to settle the dispute. This alternative is unlikely in disputes with a substantial record of settlement failure because such a record indicates a strong incentive to establish a final distribution of territory. Additionally, “giving up” may be tantamount to conceding the disputed land entirely, which may have significant security, economic, and domestic-audience costs (Allee and Huth 2006; Tir 2010). Second, they may attempt negotiations and/or nonbinding third party methods again. However, a record of

¹⁴¹ Other examples of this dynamic include the Aouzou Strip dispute between Libya and Chad (Ricciardi 1992), the Bakassi Peninsula dispute between Nigeria and Cameroon (Lefebvre 2013), and the Hanish Islands dispute between Yemen and Eritrea (Lefebvre 1998).

settlement failure indicates that such efforts are likely to be futile unless a substantial and unpredictable change in the status quo occurs. Third, states may escalate the dispute militarily. Yet this option is inherently risky, likely to be criticized by states exogenous to the dispute, and has often already been tried, without success (Senese and Vasquez 2008). Fourth, states may litigate. This option is generally unattractive during the initial stages of a dispute because rulings by international courts and arbitral panels are difficult to predict, final, and legally binding (Mitchell and Powell 2011).¹⁴² Additionally, they place control over the outcome of a dispute out of the hands of the disputants themselves (Gent and Shannon 2011). However, if the existence of bargaining deadlock is established via settlement failure, then litigation becomes attractive as a way of obtaining a final distribution of territory.

This theory presupposes some costs for maintaining a territorial dispute in the presence of bargaining deadlock. If continuing a disagreement without litigation is costless, then there is no reason to endure the risky process of adjudication or arbitration when doing nothing at all causes no harm whatsoever. In contrast, if maintaining the status quo creates substantial costs, such as economic opportunity costs from an inability to extract resources from a disputed territory, then maintaining a deadlocked dispute may be more detrimental than simply distributing the territory according to the uncertain decision of a judicial third party. This assumption does not undermine my argument because a record of settlement failure indicates that all parties to a dispute have some

¹⁴² Such rulings are “legally binding” in the sense that noncompliance incurs formal sanction under international law. This is entirely independent of the actual enforcement, which may or may not be pursued by states. For more on the relationship between sanctions, enforcement, and the binding nature of international law, see O’Connell (2008).

incentive to resolve the disagreement instead of allowing the dispute to lie dormant. Indeed, doing nothing in a given year to advance a territorial claim is the most frequent choice by territorial disputants, usually because there is no cost associated with such a course of inaction.¹⁴³ When there is a pressing need to establish definitive title to a disputed area, settlement attempts result. When these attempts fail, litigation becomes attractive as a quick way to eliminate the costs associated with unclear title. Therefore, settlement failure is an indicator of both bargaining deadlock and the costs of doing nothing to resolve a territorial claim.

To illustrate, consider again the Hawar Islands dispute, which received a binding distribution of territory from the ICJ in 2001 (Wiegand 2012). The dispute technically began in 1971, when both Bahrain and Qatar became independent from the British colonial administration, but the antecedents of the dispute go as far back as the eighteenth century.¹⁴⁴ From the 1970s to the 1990s, both sides attempted iterated rounds of bilateral negotiations, and Saudi Arabia and the Gulf Cooperation Council (GCC) attempted mediation on multiple occasions (Wiegand 2012). None of these settlement attempts found success, although a 1976 round of mediation by the Saudis managed to create a preliminary agreement that, among other things, proposed ICJ adjudication as a “tie breaker” if nonbinding settlement methods failed. Decades later, after more failed rounds of mediation, Qatar seized upon the 1976 framework to submit the case to the ICJ out of

¹⁴³ Of the 9,604 claim-state-years included in my full settlement attempts dataset, 6,406, or almost exactly two-thirds, record states doing nothing to resolve ongoing territorial claims.

¹⁴⁴ For more on these antecedents, see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, 40, available at <http://www.icj-cij.org/files/case-related/87/087-20010316-JUD-01-00-EN.pdf>.

frustration over a lack of progress in resolving the dispute out of court. In the terms of my argument, settlement failure led Qatar to propose litigation by demonstrating that bargaining deadlock existed and was extremely robust. The costs of maintaining the dispute were primarily economic, as proven oil and gas reserves were located in the disputed maritime territory surrounding the islands in question. Thus, Qatar needed to establish property rights in order to proceed with the extraction of valuable resources from the disputed area. In the absence of these rights, extraction was impossible and cooperation with Bahrain difficult. To mitigate these ongoing opportunity costs, Qatar proposed litigation as a certain means of breaking the deadlock and distributing the disputed land, though the exact distribution chosen was impossible to predict with complete precision.

5.2.2 Past Experiences and Litigations Proposals

Past experiences with binding settlement methods complicate this theoretical framework. While settlement failure gives policymakers a sense of the existence and robustness of bargaining deadlock, this information interacts with state preferences to produce decisions on whether to litigate or pursue another method of settlement. One direct influence on a state's attitude towards litigation is the nature of said state's prior interactions with international courts or arbitral panels. On this point, Powell and Wiegand (2014) and Wiegand and Powell (2011) demonstrate that states with positive win-loss records in binding settlement venues are likely to propose such methods again. States with more losses than wins, however, are less likely to litigate in the future. To explain this correlation, Powell and Wiegand (2014) argue that, because the decisions of international tribunals are inherently uncertain, states use information from past rulings to

inform present policy. When a state has achieved victory in a court or arbitral panel before, it readily litigates again in hopes that past performance is a predictor of future gain (Powell and Wiegand 2014, 364). Similarly, states that have lost territory in binding rulings before assume the worst in present disputes and are reluctant to litigate again.

I integrate this argument into my theoretical framework by noting that, in addition to altering the overall likelihood of litigation in a dispute, past experiences with binding methods change how states process the information provided by settlement failure. States with positive win-loss records in binding settlement venues will be more receptive to the information provided by settlement failure. In other words, they will be quicker to suggest litigation in the midst of negotiations or nonbinding third party methods due to the expectation that past victories reduce the uncertainty of future legal decisions. Conversely, states with negative records are likely to require more settlement failure before becoming amenable to litigation because prior territorial losses from binding rulings make states wary of using binding settlement methods again. Figure 5.1 summarizes this argument.

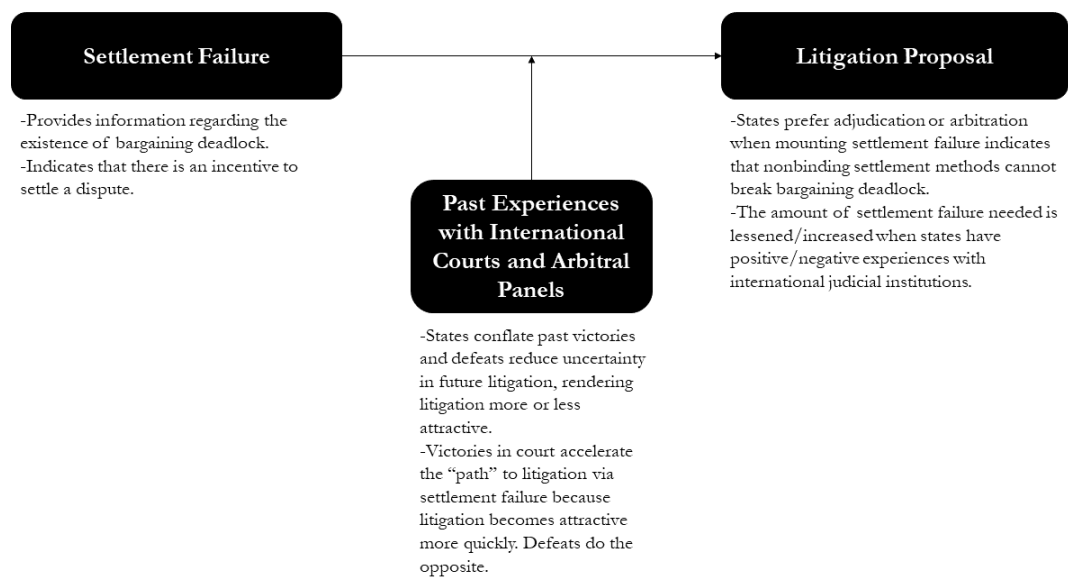


Figure 5.1: Theory of Settlement Failure, Judicial Experience, and Litigation Proposals in Territorial Disputes

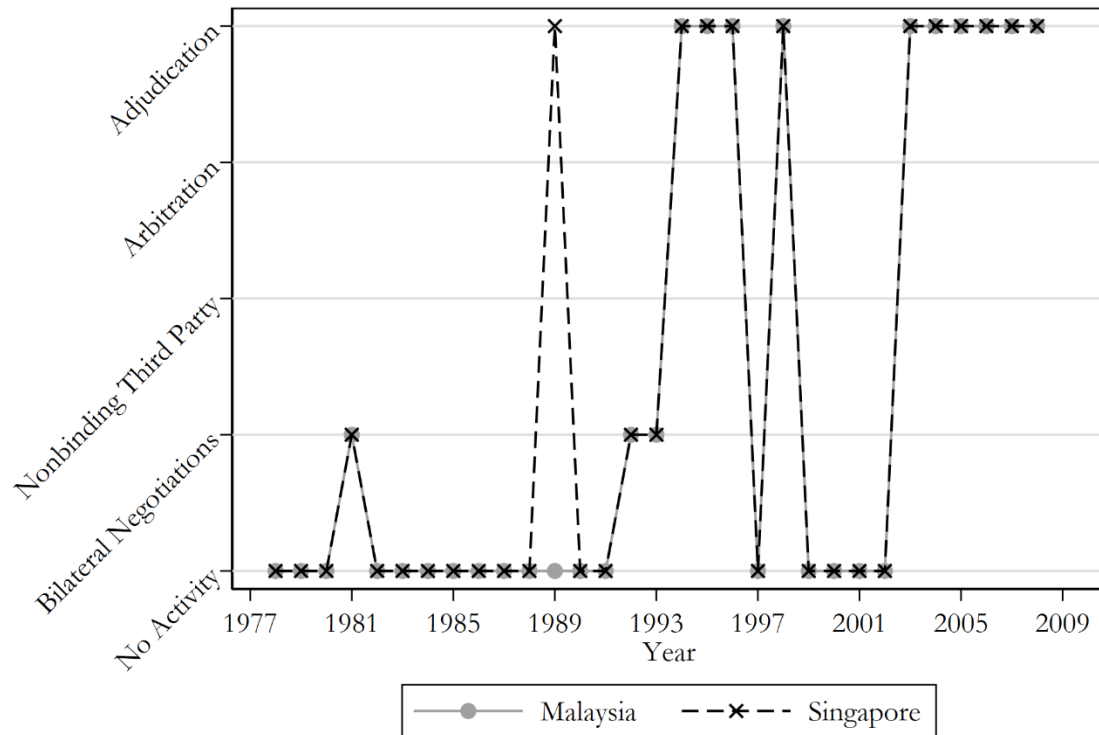
One high-profile instance of this dynamic involved Malaysia's response to settlement failure in two territorial disputes, the Pulau Sipadan/Pulau Ligitan dispute and the Pulau Batu Puteh (Pedra Branca) dispute. Figure 5.2 displays all settlement attempts that occurred during the latter dispute. The decision to litigate the former, an island dispute with Indonesia, in the ICJ resulted from a record of settlement failure and a pressing need to delimit Malaysia's maritime boundary (Haller-Trost 1995).¹⁴⁵ This case was adjudicated from the end of 1998 to the end of 2002.¹⁴⁶ Concurrently, nonbinding settlement methods showed little promise in the latter, a similar island dispute with Singapore. Bilateral negotiations had failed as early as 1981, and by 1994 both sides agreed that litigation was necessary in order to break the deadlock (Haller-Trost 1995).¹⁴⁷ However, Figure 5.2 shows a significant gap from 1999-2002 during which no settlement activity took place. This corresponds directly to the ICJ case in the Sipadan/Ligitan dispute, and Malaysian policymakers cited the court proceedings as the primary reason behind the delay. Immediately upon winning title to Pulau Sipadan and Pulau Ligitan in an ICJ ruling, Malaysia proposed ICJ adjudication to Singapore in the Pulau Batu Puteh dispute "following the positive outcome of arbitration by the ICJ on the dispute between Malaysia and Indonesia over Sipadan and Ligitan."¹⁴⁸ A positive experience in the first dispute seems to have led to a litigation proposal in the second.

¹⁴⁵ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, I.C.J. Reports 2008, 12, available at <http://www.icj-cij.org/files/case-related/130/130-20080523-JUD-01-00-EN.pdf>.

¹⁴⁶ *Sovereignty* (note 145).

¹⁴⁷ *Sovereignty* (note 145).

¹⁴⁸ "Malaysia to focus on island dispute with Singapore, says deputy premier," Bernama News Agency, December 18, 2002.



*All MIDs over this claim denoted by vertical reference line.

Figure 5.2: Settlement Activity in the Pulau Batu Puteh (Pedra Branca) Territorial Dispute (Malaysia vs. Singapore), 1978-2008

To summarize, I submit that settlement failure is a vital determinant of the timing of litigation proposals. The effects of settlement failure are increased for states possessing a positive win-loss record in binding settlement venues due to perceived correlations between past experiences and future performance. Similarly, the effects of settlement failure are dampened by past losses in court because such losses increase a state's wariness of litigating in the future. Finally, note that there is a distinction between new wins and losses in court during a territorial dispute and a state's overall experiences in judicial institutions. While both types of experience condition a state's attitude towards litigation, it is likely to judicial experiences occurring within or close in time to a

contention will influence decision-making somewhat more strongly. Still, both dimensions of judicial experience combine to modify a state's affinity for legal settlement methods. In my empirical analysis, interaction terms are used to model the relationships between settlement failure and both levels of judicial experience. Thus, I posit a conditional relationship between the effects of settlement failure and win-loss records in international courts and arbitral panels.

My theoretical claims suggest the following hypotheses:

Hypothesis 1: Increases in the number and types of failed peaceful settlement attempts increase the probability of litigation proposals.

Hypothesis 2: The effects of settlement failure are increased for states with positive win-loss records in binding settlement venues.

Hypothesis 3: The effects of settlement failure are decreased for states with negative win-loss records in binding settlement venues.

5.3 Research Design

My sample includes 152 territorial claims occurring between 1945 and 2011.¹⁴⁹ To avoid bias due to left-censoring, all claims beginning before 1945 are omitted from my analysis (Allison 2009). My unit of analysis is the claim-state-year. This means that each of the 6,482 observations in my sample represents a year of one state's participation

¹⁴⁹ While my full dataset contains settlement attempts up to 2015, missing data on my independent variables limits my sample to 2011 and before.

in a territorial dispute.¹⁵⁰ Following the coding of the Issue Correlates of War (ICOW) project, claim-states appear in my dataset when representatives of a state formally claim a territory also claimed by another state. Visible settlement activity is unnecessary for inclusion. I derive my list of territorial disputes from the ICOW project (Hensel 2001).

Litigation Proposal is my dependent variable. It is a dichotomous variable equaling 1 when authorized officials of a claim-state openly prefer litigation (i.e. adjudication or arbitration) as a dispute resolution method and 0 if else. Note that a positive case of *Litigation Proposal* does not necessarily mean that a state has actually initiated litigation. Such a case only indicates that a state displays a preference for litigation in a particular year. This may denote that a state has shown verbal or written partiality towards legal settlement methods, or it may signify that the state is working actively to initiate or support a case in court. The primary benefit of such a design is the ability to capture variation in state preferences over time, even in the absence of visible court proceedings. Additionally, even unsuccessful proposals for litigation provide important information about a state's approach to dispute settlement. My coding for this variable is based principally on Wiegand and Powell (2011), updated to 2015 with the help of Hensel (2001) and other resources.¹⁵¹

To assess levels of settlement failure, I employ three independent variables.

Peaceful Settlement Attempts is a count variable measuring mounting levels of settlement

¹⁵⁰ While I considered a dyadic research design, my theory deals with state preferences, which change frequently over time and often contradict the preferences of dyadic opponents. To capture this unique, state-level variation in my outcome, I employ a claim-state-year design.

¹⁵¹ These resources include works by the International Boundary Research Unit (IBRU), court judgments, arbitral awards, and newspaper articles accessed through the LexisNexis database.

failure over time. Its value is equal to the number of claim-state-years in which a claim-state attempted peaceful settlement activity of any kind. For instance, when *Peaceful Settlement Attempts* is coded 10, the claim-state in question has actively attempted to settle a dispute in 10 prior claim-state-years. Using this variable, I can determine the quantity of settlement failure necessary to render litigation proposals likely while simultaneously gauging how past experiences with judicial institutions alter this quantity. *Negotiations Attempted* is dichotomous, coded 1 if bilateral negotiations have been attempted by a claim-state in a dispute. Similarly, *Nonbinding Third Party Attempted* is equal to 1 if nonbinding third party settlement methods like mediation have been attempted.

These latter variables account for the effects of the failure of different types of peaceful settlement method. Both must be included because the failure of different settlement procedures provides policymakers with information regarding the existence of bargaining deadlock that is entirely distinct from the mere quantity of prior settlement attempts. I expect that all of these variables will have positive estimated effects. As my theory surmises, mounting signals of bargaining deadlock from nonbinding settlement attempts augments the attractiveness of litigation as a guaranteed “tiebreaker.” Wiegand and Powell (2011) also provide these variables.

My approach to quantifying settlement failure is distinctive. Scholars like Gent and Shannon (2011), Hensel et al. (2008), and Lefler (2015) deal only with the number of prior settlement attempts, and they frequently apply a decay function that weights the

importance of a particular settlement attempt by how long ago it occurred.¹⁵² Gent and Shannon (2011) also differentiate attempts ending in some intermediate agreement between disputants from attempts that produce no such agreement. My panel dataset, which takes the place of attempt-level designs, allows me to evaluate settlement failure in a more extensive and multidimensional fashion. My dichotomous settlement failure measures combine with *Peaceful Settlement Attempts* to create a precise picture of the information available to policymakers regarding the existence of bargaining deadlock. Moreover, I do not assume that policymakers give less weight to older failed settlement attempts according to some regular but arbitrary function. As such, my research design represents an improvement upon the literature that deals with the concept of settlement failure in territorial disputes.

The independent variable *Judicial Experience* measures a claim-state's past experiences with international courts and arbitral panels. *Judicial Experience* is coded 1 if a state has won a territorial case in court before or during the current year, -1 if it has lost such a case, and 0 if no experience exists or if a state has conflicting experiences. "Victories" occur when a state gains more than 50 percent of a disputed territory from a binding decision (Wiegand and Powell 2011). Similarly, defeats occur when a state loses the same. While this design may seem simplistic, the relative rarity of experience of any kind with international courts or arbitral panels on territorial issues means that my measurement captures such experiences with a high level of precision. *Judicial Experience* follows the measurement design of Wiegand and Powell (2011) and Powell

¹⁵² For instance, Gent and Shannon (2011) only count prior settlement attempts that occur within 5 years of the current attempt. All attempts occurring before the 5-year cut-off are simply discarded.

and Wiegand (2014), and my data was taken from these sources, updated to 2012.¹⁵³ I expect that claim-states with positive experiences in binding settlement fora should propose litigation more readily and in response to lower levels of settlement failure than states with no experience. States with negative experiences should do the opposite.

I also include control variables suggested by the literature. *Democracy* is a continuous variable measuring regime type. Claim-states with higher values of *Democracy* more closely match the ideal of electoral democracy put forward by the Varieties of Democracy (V-Dem) project. Data for this variable is drawn from Version 7 of the V-Dem project's electoral democracy index (Coppedge et al. 2017). According to the literature, states with democratic institutions are more likely to litigate because normative and political dynamics intrinsic to democracy make binding settlement methods more attractive in territorial disputes (Allee and Huth 2006; Gent and Shannon 2011). Unfortunately, the significance of this explanatory factor is far from proven, and many studies utilize dichotomous measures that may oversimplify the complex concept of democracy.¹⁵⁴ Nevertheless, I expect the estimated effects of *Democracy* to be positive. *Material Capabilities* gauges the material power of a claim-state. This includes military and economic strength, as well as demographic size. Data for this variable is drawn from the Composite Index of National Capabilities (CINC) score (Singer, Bremer,

¹⁵³ There is the possibility of asymmetric causation here. In other words, negative experiences and positive experiences may have distinctive effects that do not lie upon a linear continuum. However, Wiegand and Powell (2011) and Powell and Wiegand (2014) demonstrate that a linear effect does exist, in line with the intuitive relationship between wins and losses in court and the information they provide. Moreover, the linear model limits the complexity of an already complex model. Thus, I leave testing for asymmetric causation to future researchers.

¹⁵⁴ See, for example, Mitchell (2002), Powell (2015), Wiegand and Powell (2011).

and Stuckey 1972). Several studies find a link between power and an aversion to binding settlement methods. This correlation is attributed to the greater ability to influence outcomes out of court granted to states with large militaries, robust demographics, and substantial economic clout (Lefler 2015; Allee and Huth 2006). Thus, the impact of *Material Capabilities* on the likelihood of litigation proposals should be negative. *Global Pacific Settlement Agreements* and *Regional Pacific Settlement Agreements* are two count variables equal to the number of peace-promoting agreements, global and regional, to which a given claim-state belongs. The effect for this variable should be positive, as membership in more such agreements likely indicates a more robust commitment to the peaceful settlement of international disputes (Shannon 2009). Data for this variable is derived from the Multilateral Treaties of Pacific Settlement (MTOPS) dataset (Hensel 2005). Finally, *Past Fight* is a dichotomous variable equal to 1 if a claim-state has fought an interstate war over the territorial claim with at least one opponent. This variable was taken from data created by the Correlates of War (COW) project (Sarkees and Wayman 2010).

To control for temporal trends, I use two variables: *Dispute Age* and *Year*. *Dispute Age* is equal to the number of years since a claim-state became involved in a territorial claim. Thus, I control for any broad temporal trend that is distinct from the influence of settlement failure. *Year* controls for the calendar year in which an observation is recorded (e.g. 1945). For computational reasons, I set this variable equal to 0 in 1945 and add one for each year after (1 in 1946, 2 in 1947, and so on). Several works suggest that trust in international judicial institutions increased as the latter half of the twentieth century progressed, leading to a higher likelihood of litigation at the “end” of

my data in the early twenty first century (Alter 2014; Keohane 2002). Therefore, this coefficient is likely to be positive. Note that there is no significant collinearity between these two factors. I derived both measures from the ICOW provisional dataset (Hensel 2001).¹⁵⁵

5.4 Empirical Analysis

I use a pair of hybrid logistic regressions to test my hypotheses. Logistic regression is necessary because my dependent variable is binary (Long 1997). Hybrid regression, also known as the “Between-Within” method, isolates the effects of change over time in the independent variables by controlling for all subject level confounders (Allison 2009; Bell and Jones 2015). While this feature is similar to that of conventional fixed effects models, hybrid regression maintains the ability to include both time-invariant independent variables and cases with no variation on the dependent variable in the analysis.¹⁵⁶ This is achieved by including the subject-level means of each independent variable in the model alongside mean-centered versions of the original regressors.¹⁵⁷ Thus, in my models, each independent variable is assigned two coefficients, one for the subject- or claim-state-level effect and one for the effects of change in the independent

¹⁵⁵ Summary statistics for all variables may be found in Appendix C. As is discussed below, my choice of the hybrid or “Between-Within” model requires disaggregating each independent variable into subject-level “between” effects and mean-centered “within effects” (Allison 2009; Bell and Jones 2015).

¹⁵⁶ The latter is a particular problem for my analysis, since disputes in which litigation occurs are rare. The conventional fixed-effects method makes use of a conditional logit model that is unable to analyze subjects without variation on the dependent variable, which would limit my sample severely. Allison (2014) shows that, so long as the subject-level means have effects that are roughly linear, the inclusion of no-variation subjects in a hybrid logistic regression does not bias the model. For more on this topic, see <https://statisticalhorizons.com/problems-with-the-hybrid-method>.

¹⁵⁷ In my case, the “subjects” are claim-states.

variable within a claim-state over time. To illustrate, the coefficient for “*Peaceful Settlement Attempts*” represents the effects of mounting settlement attempts over time, while the coefficient for “Mean(*Peaceful Settlement Attempts*)” estimates the difference between claim-states with more or less overall settlement attempts.

The results for two models are included in Table 5.1. The first model serves as a baseline, showing the effects of my variables of interest without interaction terms. The second model interacts the effects of within-claim-state change in my settlement failure variables with both levels of *Judicial Experience*. Including both levels of interaction is necessary because, for some claim-states, experiences with legal settlement venues change over time. In order to comprehend the full influence of past experiences on settlement failure and litigation, both interaction terms must be estimated for all settlement failure variables. Note also that all within-claim-state effects are lagged by one year to improve inference. Table 5.2 presents average marginal effects obtained from both models for my settlement failure and judicial experience variables in isolation. Figure 5.3 contains the marginal predicted probabilities from the interaction model for all independent variables of interest in graphical form.

TABLE 5.1

HYBRID LOGISTIC REGRESSIONS TESTING THE INTERACTION BETWEEN
SETTLEMENT FAILURE AND JUDICIAL EXPERIENCES ON A GLOBAL
SAMPLE OF TERRITORIAL DISPUTES, 1945-2011

Independent Variable	Coefficient	S.E.	Coefficient	S.E.
<i>Peaceful Settlement Attempts (PSA)</i>	0.182***	(0.0490)	0.240***	(0.0533)
<i>Judicial Experience x PSA</i>			0.386**	(0.152)
<i>Mean(Judicial Experience) x PSA</i>			-0.186**	(0.0826)
<i>Negotiations Attempted (NA)</i>	1.286**	(0.545)	1.051*	(0.594)
<i>Judicial Experience x NA</i>			-4.586*	(2.377)
<i>Mean(Judicial Experience) x NA</i>			1.307	(1.284)
<i>Nonbinding Third Party Attempted (NTPA)</i>	1.637***	(0.450)	2.267***	(0.540)
<i>Judicial Experience x NTPA</i>			4.866**	(2.070)
<i>Mean(Judicial Experience) x NTPA</i>			-10.51***	(2.640)
<i>Judicial Experience</i>	-0.555	(0.446)	0.916	(0.679)
<i>Capabilities</i>	24.86	(42.80)	7.997	(44.01)
<i>Global Treaty Commitments</i>	-0.350	(0.230)	-0.314	(0.246)
<i>Regional Treaty Commitments</i>	-0.145	(0.221)	-0.120	(0.233)
<i>Past Fight</i>	6.100***	(1.784)	6.174***	(1.851)
<i>Democracy</i>	3.272***	(1.236)	2.851**	(1.269)
<i>Mean(PSA)</i>	0.220**	(0.0972)	0.198*	(0.106)
<i>Mean(NA)</i>	-0.0281	(0.991)	-0.0228	(1.094)
<i>Mean(NTPA)</i>	0.675	(0.992)	0.243	(1.079)
<i>Mean(Judicial Experience)</i>	-0.257	(0.913)	0.233	(1.062)
<i>Mean(Capabilities)</i>	-58.14**	(23.31)	-61.34**	(26.24)
<i>Mean(Global Treaty Commitments)</i>	1.307***	(0.335)	1.427***	(0.368)
<i>Mean(Regional Treaty Commitments)</i>	0.170	(0.150)	0.156	(0.162)
<i>Mean(Past Fight)</i>	-1.536	(1.314)	-1.489	(1.434)
<i>Mean(Democracy)</i>	-0.0997	(1.269)	-0.265	(1.372)
<i>Year</i>	-0.298***	(0.0468)	-0.250***	(0.0522)
<i>Year²</i>	0.00423***	(0.0006)	0.00359***	(0.00061)
<i>Dispute Age</i>	0.130***	(0.0425)	0.133***	(0.0446)
<i>Dispute Age²</i>	-0.00317***	(0.0007)	-0.00322***	(0.00068)
<i>Constant</i>	-8.804***	(1.617)	-10.09***	(1.874)
<i>Var(Constant) by Claim-State</i>	15.936	(4.043)	19.446	(5.059)
<i>N</i>	6,842		6,842	
<i>Number of Claim-States</i>	314		314	

TABLE 5.1 (contd.)

Independent Variable	Coefficient	S.E.	Coefficient	S.E.
Log Likelihood	-613.199		-591.614	
Wald Chi2	(22) 203.50		(28) 208.31	
Prob. > Chi2	0		0	
AIC	1274.397		1243.228	
BIC	1438.337		1448.153	

*** p<0.01, ** p<0.05, * p<0.1, Standard Errors in Parentheses

TABLE 5.2

AVERAGE MARGINAL EFFECTS FOR THE BASELINE MODEL TESTING THE
EFFECTS OF SETTLEMENT FAILURE AND JUDICIAL EXPERIENCE ON A
GLOBAL SAMPLE OF TERRITORIAL DISPUTES, 1945-2011

Independent Variable	Average Marginal Effect (Baseline Model)	Average Marginal Effect (Interaction Model)
<i>Peaceful Settlement Attempts</i> (10 Attempt-Years, -5 to 5)	0.04	0.05
<i>Negotiations Attempted</i> (-.5 to .5)	0.03	0.02
<i>Nonbinding Third Party Attempted</i> (-.5 to .5)	0.04	0.05
<i>Judicial Experience</i> (-.5 to .5)	-0.01	0.03
<i>Mean(Judicial Experience)</i> (-1 to 1)	-0.01	-0.01

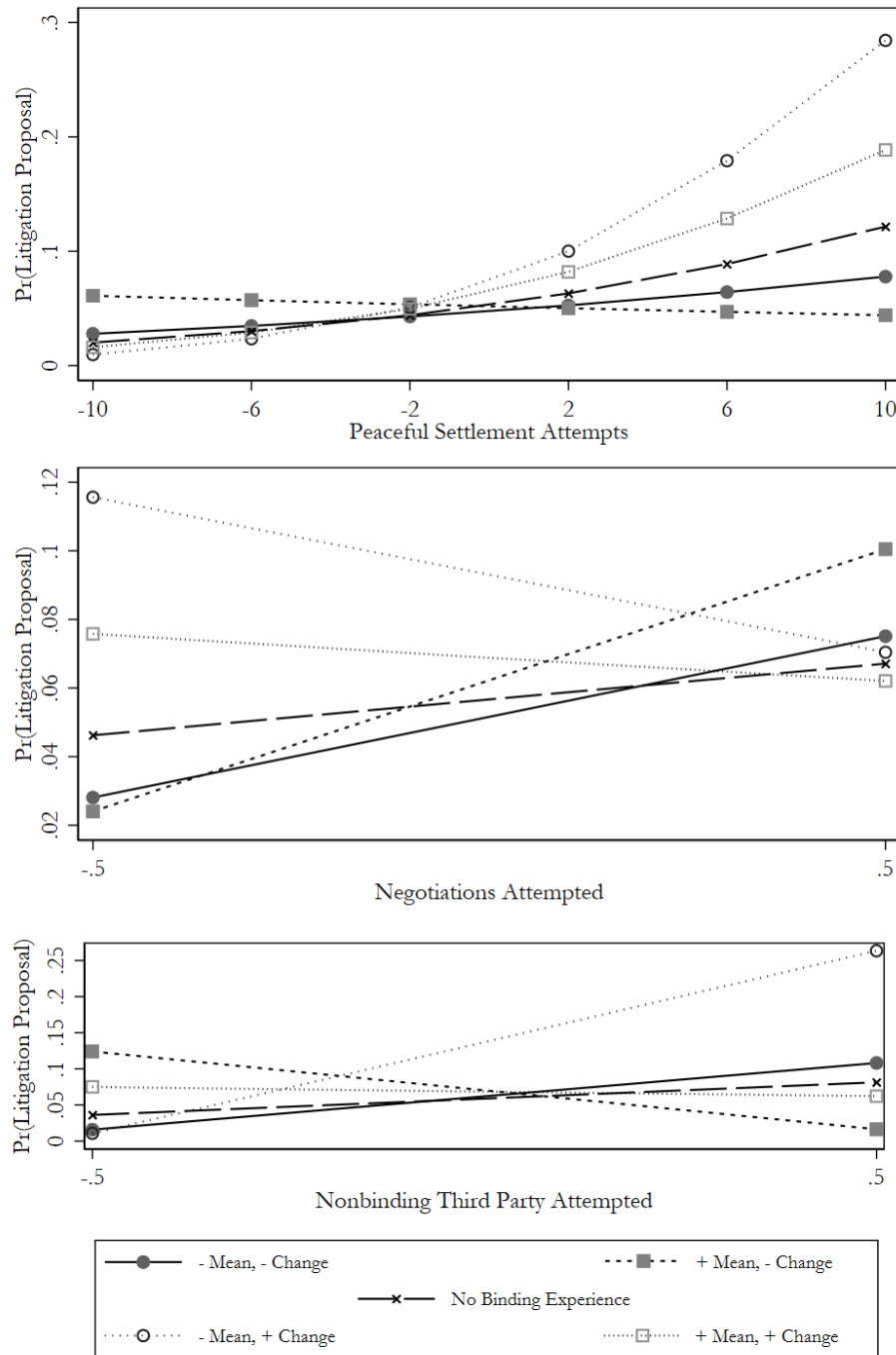


Figure 5.3: Average Marginal Effects: Settlement Failure, Judicial Experience, and Litigation Proposals in Territorial Disputes¹⁵⁸

¹⁵⁸ In Figure 5.3, “-” denotes a variable equal to -0.5, while “+” denotes a variable equal to 0.5.

The results from my models support my theory's emphasis on settlement failure as a primary cause of proposals for litigation. The effects of change over time in all three settlement failure variables (*Peaceful Settlement Attempts*, *Negotiations Attempted*, and *Nonbinding Third Party Attempted*) are highly significant and positive, both in the baseline model and in the more difficult-to-interpret interaction model. This indicates that, when claim states attempt new types of peaceful settlement method, and when the number of prior attempts at peaceful settlement increases over time, litigation proposals become more likely. Table 5.2 shows that these effects are substantial in both models.¹⁶⁰ Consider that the overall average predicted probability for litigation proposals is .06 for both models. On average, attempting negotiations boosts the probability by .03 (50 percent from the average) in the baseline model and .02 (33 percent) in the interaction model, while attempting nonbinding third party methods adds an additional .04 (67 percent) and .05 (83 percent), respectively. Combined with 10 prior peaceful settlement attempts, my settlement failure variables can boost the likelihood of litigation proposals by .11 (183 percent) or .12 (200 percent), depending on the model used. While this seems small, it is substantial when the relative rarity of litigation is considered. Further, as per the literature, the finding suggests that a large amount of settlement failure is needed for litigation proposals to become genuinely likely.

Judicial Experience appears to have no direct effect on the probability of a litigation proposal. The baseline model returns no significant or substantial effect at either level. The main effects for *Judicial Experience* in the interaction model are also

¹⁶⁰ The non-standard shift sizes presented in Table 5.2 and elsewhere are an artifact of my mean centered variables isolating change over time. The distances between the values are meaningful; the actual values are not.

insignificant, though the inclusion of interaction terms makes interpreting this coefficient difficult. The significance of the interaction terms means that higher levels of settlement failure alter the effects of *Judicial Experience*. Notably, the main effect for change over time in *Judicial Experience* is negative in the baseline model and positive in the interaction model. The marginal effects are slight and negative, with the exception of the positive “within” effect of .03 in the interaction model. This one substantive effect is likely due to the influence of sizeable interaction terms. These findings provide only insubstantial evidence that past experiences in judicial institutions affect present state behavior in a meaningful way. Indeed, the changes of sign observed between my two models suggest considerable instability in the coefficients. Moreover, the substance of the effects of past experience appears almost entirely dependent upon levels of settlement failure. As such, I cannot conclude from my sample that *Judicial Experience* exerts a regular influence on the probability of litigation proposals in territorial disputes that is distinct from that of settlement failure.

The interaction model depicts a complex picture of how past experiences in judicial fora influence the likelihood of litigation. All but one (*Judicial Experience x Negotiations Attempted*) of the interaction terms reach significance. In terms of sign, the interaction coefficients are remarkably divergent. The effect of *Peaceful Settlement Attempts* on the probability of a litigation proposal is augmented by positive changes over time in *Judicial Experience*, but the same effect is suppressed for claim-states with better overall experiences with international courts or arbitral panels. The same divergent interaction holds for *Nonbinding Third Party Attempted*. Trying mediation, conciliation, or the like boosts the likelihood of litigation proposals even more when a claim-state

experiences a positive change over time in past judicial experiences, but this effect is suppressed for claim-states with overall positive experiences and increased for claim-states with overall negative experiences. The opposite holds true for *Negotiations Attempted*. Over time changes in experience suppress the effects of attempting negotiations noticeably. Technically, the claim-state-level interaction increases the same effect, though this coefficient is insignificant. Consequently, the interaction between past experiences with binding settlement methods and settlement failure appears to be more complex than my hypotheses stipulate.

Figure 5.3 aids in the interpretation of these findings. In the absence of any experience with judicial settlement methods, the effects of all three settlement failure variables are positive and relatively modest. The addition of 20 peaceful settlement attempts with no past experiences increases the probability of litigation proposals by .1. Attempting negotiations increases the same probability by around .02, a rather small change. Finally, attempting nonbinding third party methods increases the probability by an average of .05. As such, without experience in court, the road to litigation is gradual and slow. If a claim-state wins a case in court during a given territorial dispute, the average effect of the aforementioned 20-unit shift in *Peaceful Settlement Attempts* is increased, to .27 or .17, depending upon whether the subject-level mean of *Judicial Experience* is positive (.5) or negative (-.5). Losses in court suppress this effect substantially, to around .05 if the claim-state-level mean is positive and a surprising -.02 if the same mean is negative. Therefore, for *Peaceful Settlement Attempts*, past experiences in court are decisive, particularly as they change over time within a dispute. Wins and losses in court increase and decrease the effects of this variable, respectively.

This change is only somewhat influenced by the claim-state-level means. This supports my theory that victories in court increase a state's likelihood to litigate again by increasing the attractiveness of litigation as an alternative to bargaining deadlock.

It is interesting to contrast these patterns with those associated with *Negotiations Attempted*. A victory in court within a dispute causes the effect of trying negotiations to be negative (-.01 if the claim-state mean of *Judicial Experience* is positive, -.05 if negative), while a defeat causes a substantial positive increase (.08 if the mean is positive, .05 if negative). The effect of the claim-state-level mean is insignificant. These effects appear to contradict the notion that the failure of negotiations should increase the probability of adjudication or arbitration even more when a state has recently won a victory in court. However, consider the structure of my variables. Negotiations are virtually costless, meaning that most states attempt negotiations near the beginning of a dispute, before some future victory or defeat in court. If there is a future victory recorded, then the initial value of *Judicial Experience* is negative, causing the change in *Negotiations Attempted* to increase the probability of litigation proposals more than usual. Conversely, *Negotiations Attempted* exerts a slight negative influence when there is a defeat in a state's future. When the victory or defeat occurs, the constant effect of *Negotiations Attempted* "switches," momentarily decreasing the probability of trying litigation after a victory and increasing the same probability after a defeat. In the case of a victory, it is possible to attribute the "dip" in probabilities to the need for a delay to implement one court ruling before pursuing a second case. The victory necessarily augments the effects of *Prior Settlement Attempts*, quickly making up for the momentary decrease. The case of defeat is far more puzzling. At the very least, my results

demonstrate that past experiences and negotiations work together in a complex manner to bring litigation about.

For *Nonbinding Third Party Attempted*, the results are more supportive of my theory. If a claim state has a negative mean value for *Judicial Experience* but wins a court case, the effect of attempting mediation jumps from .09 to .25, an enormous shift. With a positive mean, the same victory causes a shift in the effect size from -.11 to -.01. Several conclusions are apparent. First, trying nonbinding third party methods can have a large effect on the likelihood of litigation when past experiences with judicial institutions are in play. Second, attempting mediation actually suppresses the probability of litigation in states with better win-loss records, even as it massively augments the same probability for states with worse records. This finding may be explained by mediators' use of binding settlement methods as a conflict management tool. For states with generally negative experiences in court, mediators may be instrumental in applying incentives to litigate again. For states with positive experiences, the use of mediation may reflect a desire to avoid litigating again, or it may involve a mediator that wishes to manage the conflict without judicial help. Nevertheless, within-dispute victories and losses in court return precisely the effects predicted by my theory, in spite of the influence of the claim-state-level means.

However, my interaction terms function in both directions. The effect of a within-dispute victory in court on the probability of litigation is -.01 if *Peaceful Settlement Attempts* is relatively low (-5), but the same victory increases the probability of a litigation proposal by an average of .08 if the same variable is 10 attempt-years higher (5). Attempting negotiations lowers the average effect of a similar victory from .07 to -

.02. Attempting nonbinding third party methods increases the average effect from -.02 to .1. Complex dynamics are also evident when the claim-state-level means of *Judicial Experience* are considered. At identical levels of my settlement failure variables, the effects of -1 to 1 shifts in Mean(*Judicial Experience*) are .03 to -.05 (*Peaceful Settlement Attempts*), -.04 to .02 (*Negotiations Attempted*), and .2 to -.3 (*Nonbinding Third Party Attempted*).¹⁶¹ To summarize, within-dispute victories in court have larger effects when the number of prior peaceful settlement attempts is high and when nonbinding third party methods have already been attempted. These effects are suppressed when negotiations have been attempted. Simultaneously, claim-states with better records in court and lengthy records of settlement failure are actually less likely to propose litigation than states with worse records. The same is true of states that have attempted mediation and the like, though in more dramatic fashion.

Perhaps the most coherent takeaway from these findings is that the effects of past judicial experiences are heavily dependent upon levels of settlement failure.¹⁶² A state's win-loss record comes into play only when settlement failure is high, and I can produce little substantive evidence that experiences with judicial institutions exert independent influence on the likelihood of litigation. Lastly, note that many claim-states have uniformly positive or negative judicial experiences, and a large number have no experience at all. In these cases, a state's experiences with binding settlement methods do not change over the course of a given dispute, whether they are positive, negative, or

¹⁶¹ Note that this interaction is not statistically significant.

¹⁶² My findings also suggest that attempting negotiations has only a very small effect on the likelihood of litigation proposals, perhaps because doing so is extremely common.

nonexistent. For these states, the within-claim-state coefficient for *Judicial Experience* and all associated interaction terms drop out of the model. This is because the claim-state-level mean in such cases is a constant, and the lack of change over time means that the mean-centered within-claim-state variables equal zero. Figure 5.4 provides predicted probabilities for these uniform cases. Surprisingly, uniform negative experiences give the effect of *Peaceful Settlement Attempts* a substantial positive boost. Similar experiences also boost the effects for attempting nonbinding third party methods, though they also suppress, to a small degree, the effects of trying bilateral negotiations. This raises the question of why states with only negative experiences in international courts or arbitral panels appear to be more susceptible to at least two dimensions of settlement failure. The answer lies more in an artifact of the data than in a causal claim. There are only four territorial claims with uniformly positive or negative experiences: the Cayo Sur/Media Luna dispute (Honduras-Nicaragua), the San Andres y Providencia dispute (Nicaragua-Colombia) and the Conejo Island dispute (Honduras-El Salvador). Only one of the aforementioned claim-states (Colombia in the San Andres y Providencia claim) experiences change over time in judicial experience. The others inherit legacies of arbitration incurred before the end of the Second World War in 1945, the beginning of my observation period. Given these special attributes and the geographically limited nature of these cases, the findings for claim-states with uniform judicial experience should be treated with some suspicion.

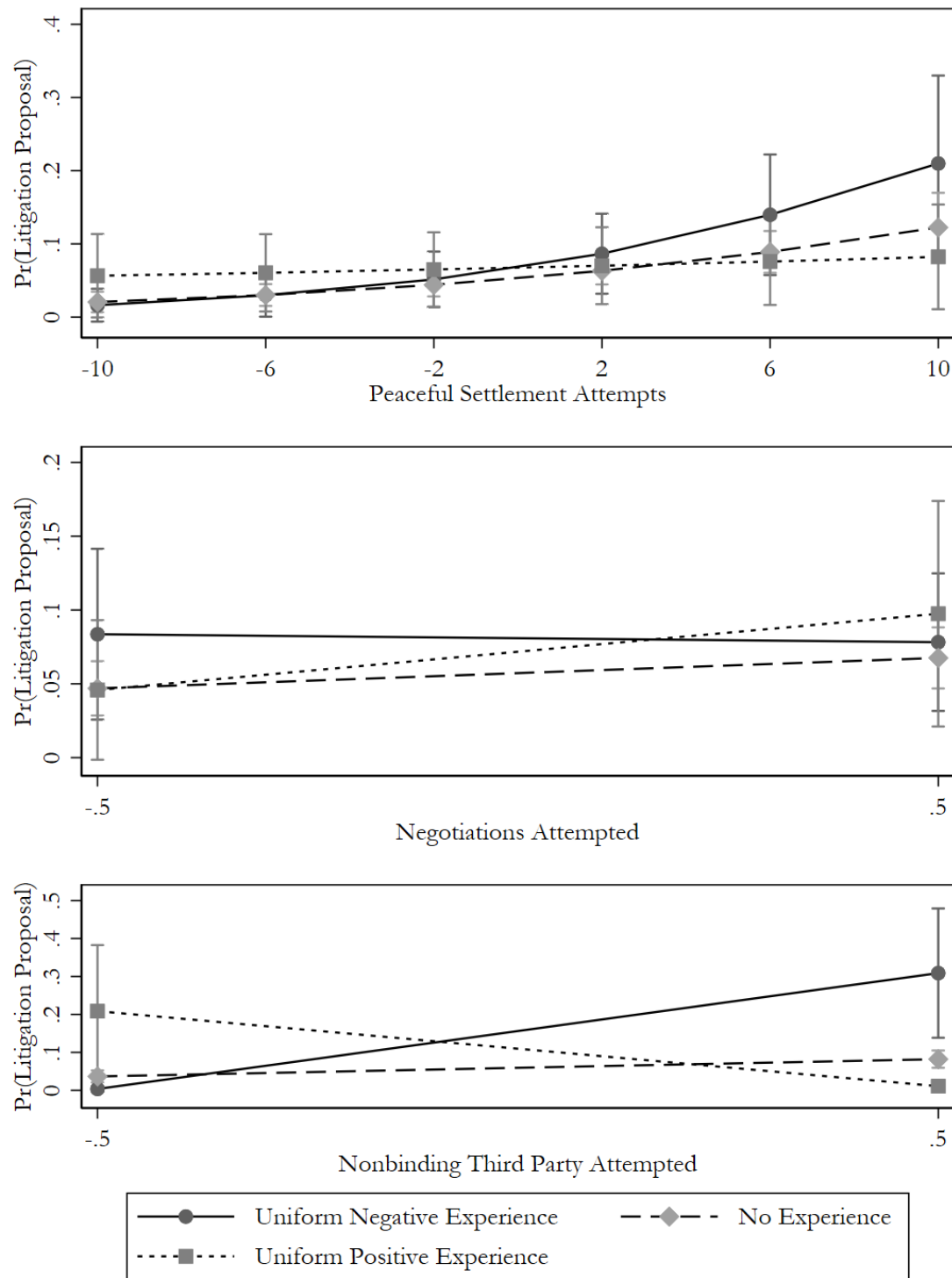


Figure 5.4: Average Marginal Effects: Settlement Failure and Litigation Proposals with Uniform Judicial Experience

Outliers provide interesting insights into my results. An analysis of residuals for both models returns two distinguishable sets of outliers. The first set is a group of four non-proposals (*Litigation Proposal*=0) between 2008 and 2011 by Eritrea in the dispute over Badme and other border areas with Ethiopia. The second is a similar set of three non-proposals, 2004-2006, by Cameroon in the Lake Chad dispute with Nigeria. My models assigned all of these claim-state-years a high probability of experiencing a litigation proposal, yet no such proposal was forthcoming. In explanation, note that both of these disputes have a relatively unique structure. In connection with the dispute over the Bakassi Peninsula, the Lake Chad Islands dispute was submitted to the ICJ for adjudication.¹⁶³ For its part, Cameroon won the case by binding ruling in 2002, and Nigeria was ordered to remove its military forces from the disputed areas. Nigeria refused to comply until 2006, however, which is when the territorial dispute was officially resolved. Similarly, a formal arbitration took place in the Badme frontier dispute, and the arbitral panel finally awarded much of the disputed territory, including the town of Badme, to Eritrea in 2002.¹⁶⁴ Ethiopia refused to abide by the decision, leading to a further set of negotiations. In both disputes, my models are “right” in predicting a high probability for litigation proposals because litigation actually occurs. But noncompliance

¹⁶³ Cameroon initially submitted only the Bakassi Peninsula claim for ICJ adjudication. *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria)*, Application Instituting Proceedings, ICJ, 29 March 1994, available at <http://www.icj-cij.org/files/case-related/94/7201.pdf>. Cameroon amended this in a 1994 Additional Application that added the Lake Chad matter to the Court’s docket as part of the original case. *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria)*, Application Additional to the Application Instituting Proceedings Brought by the Republic of Cameroon, ICJ, 6 June 1994, available at <http://www.icj-cij.org/files/case-related/94/7203.pdf>.

¹⁶⁴ For the full delimitation, see *Decision Regarding Delimitation of the Border Between Eritrea and Ethiopia*, Decision of 13 April 2002, Eritrea-Ethiopia Boundary Commission, available at http://legal.un.org/riaa/cases/vol_XXV/83-195.pdf.

with the legal decision creates additional claim-state-years after the binding decision that are unlikely to contain further litigation, despite high levels of settlement failure.

Substantively, omitting these outliers from my analysis alters only one inference, that of the interaction between *Nonbinding Third Party Attempted* and the within-claim-state level of *Judicial Experience*. This interaction falls out of significance, implying that it is mostly outlier driven. However, all other inferences remain the same in the outlier-free models.

Among the control variables, *Democracy* and *Past Fight* are significant and positive at the within-claim-state level in both models. This means that fine-grained changes over time in regime type and the act of entering into a war with an opponent over a claim increase the probability of litigation proposals. The former matches the expectations of the literature (Allee and Huth 2006; Gent and Shannon 2011), though the insignificance of the claim-state-level mean indicates that more democratic states are not noticeably more likely to propose litigation than less democratic states. The latter likely reflects the influence of exhaustion on the use of binding settlement methods.¹⁶⁵ At the claim-state-level, three variables reach significance in both models. *Peaceful Settlement Attempts* is positive and significant, indicating that claim-states with more overall peaceful settlement attempts are more likely to try litigation than states with fewer attempts. *Capabilities* is negative and significant, meaning that more powerful claim-states have less affinity for legal settlement methods. This matches the predictions of the literature (Allee and Huth 2006; Lefler 2015). The positive and significant coefficient of

¹⁶⁵ For example, Chad and Libya agreed to submit the Aouzou Strip dispute to ICJ adjudication following a decades-long war over the disputed region that resulted in a stalemate (Ricciardi 1992).

Global Treaty Commitments suggests that claim-states with stronger attachments to global international institutions are more likely to propose litigation (Shannon 2009). Finally, both *Year* and *Dispute Age* are highly significant, and I have included quadratic terms, both significant, to model nonlinear temporal trends. Fascinatingly, the two measures run counter to each other. As *Dispute Age* increases, its estimated effect is positive, but levels off over time. In contrast, *Year* produces an initial decrease in the probability of litigation proposals that levels off, then increases sharply. Thus, conditional upon my other independent variables, the probability of a state resorting to litigation initially increases, then remains stable as the territorial dispute ages. However, disputes that took place around 1945, along with contentions occurring later in the twentieth century and early in the twenty first, are more likely to experience proposals for litigation than disputes occurring in the middle of my observation period.

To further illuminate the trends in my analysis, Figure 5.5 presents model predicted probabilities for two well-known territorial disputes. The first is the San Andrés y Providencia dispute between Nicaragua and Colombia. Nicaragua's application instituting proceedings against Nicaragua is illustrative of the role of settlement failure. Nicaragua cites a litany of "fruitless attempts" at obtaining a bilateral settlement with Colombia as evidence that "there was no possibility of a bilateral agreement between Nicaragua and Colombia on the territorial issues that divided them)."¹⁶⁶ Colombia

¹⁶⁶ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application Instituting Proceedings, ICJ, 6 December 2001, available at <http://www.icj-cij.org/files/case-related/124/7079.pdf>, 6-8.

objected that a 1928 treaty had already settled the matter.¹⁶⁷ A 2007 ICJ preliminary ruling established that Colombia did, in fact, own a portion of the disputed territory under the 1928 treaty. This meant that no further legal action could be taken on the matter of this portion of the disputed territory.¹⁶⁸ Consequently, Figure 5.5 shows a significant gap in the predicted probabilities for Nicaragua and Colombia until the 2007 ruling. After the 2007 victory, marked with a vertical line in Figure 5.5, Colombia allowed the remaining territories and maritime areas to be adjudicated by the ICJ, in spite of objecting to the ICJ's jurisdiction in the first place. Indeed, the ICJ handed down a definitive ruling in 2012.¹⁶⁹ Thus, in Figure 5.5, the predicted probabilities for Colombia accelerate upward after the 2007 ruling, converging on Nicaragua's after a small initial dip.¹⁷⁰ To summarize, the 2007 victory in Court encouraged Colombia to consent to the rest of the adjudication process, thereby increasing the effects of successive attempts at achieving a final settlement.¹⁷¹

¹⁶⁷ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections of Colombia, ICJ, 28 July 2003, available at <http://www.icj-cij.org/files/case-related/124/13868.pdf>.

¹⁶⁸ *Territorial and Maritime Dispute (Nicaragua v. Colombia) Preliminary Objections*, Judgment of 13 December 2007, I.C.J. Reports 2007, 832, available at <http://www.icj-cij.org/files/case-related/124/124-20071213-JUD-01-00-EN.pdf>.

¹⁶⁹ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, 624, available at <http://www.icj-cij.org/files/case-related/124/124-20121119-JUD-01-00-EN.pdf>.

¹⁷⁰ Here, the "dip" may simply reflect the low likelihood that the ICJ would hand down a ruling on the merits the year after a ruling on preliminary objections. Most ICJ cases last at least a year after preliminary rulings.

¹⁷¹ Subsequently, Colombia responded negatively with the 2012 ruling, arguing that the ICJ had erroneously lopped off a significant portion of the exclusive economic zone surrounding the islands of San Andres and Providencia. "Colombia-Nicaragua Maritime Zone Dispute Leads to Heightened Bilateral Tensions," *Janes Intelligence Weekly* 20, no. 182, September 12, 2013. It refused to comply with the ruling. However, this occurred after the observation period of my data, and it was only in response to the maritime portion of the dispute.

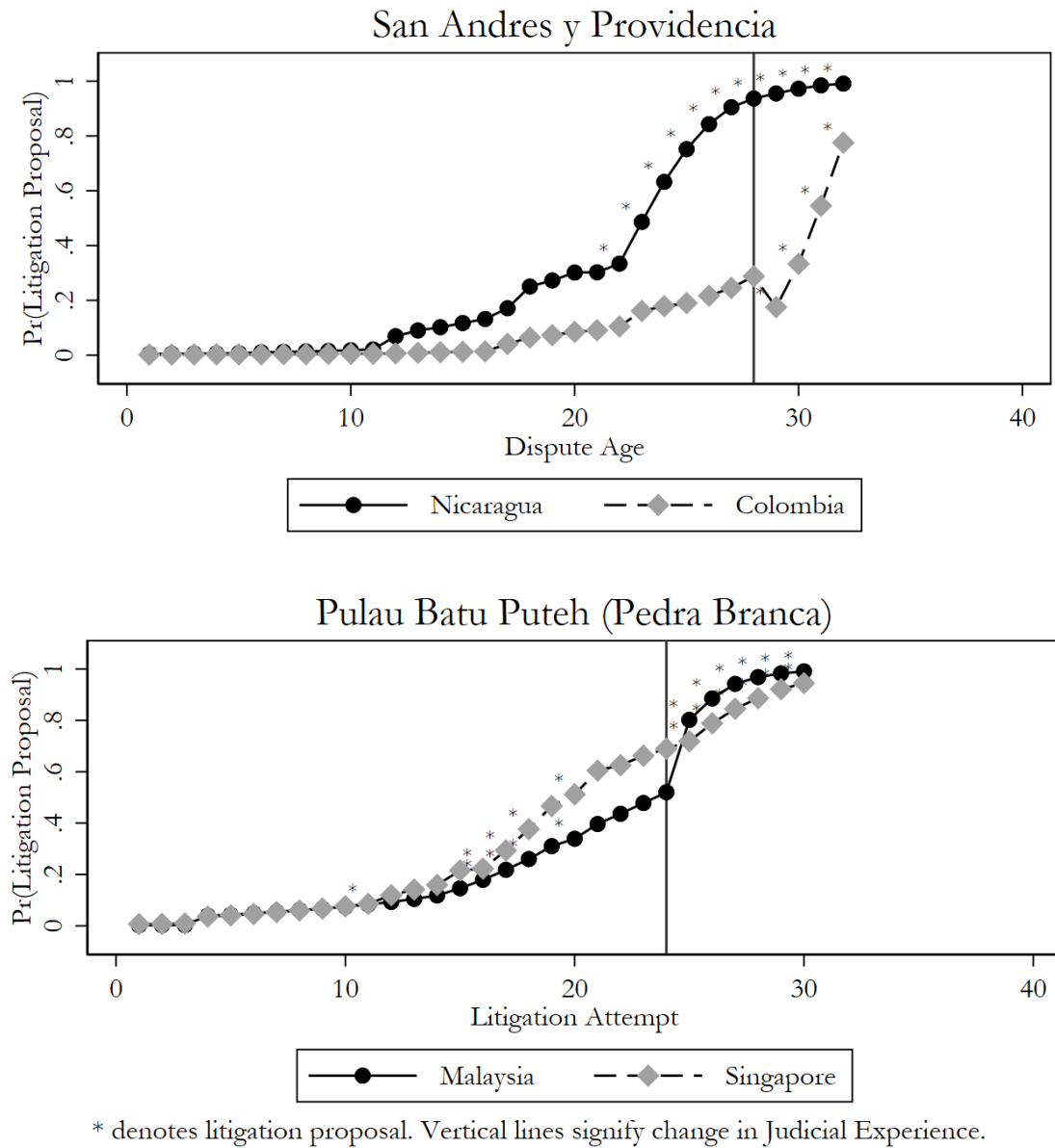


Figure 5.5: Predicted Probabilities: Judicial Experience and the Timing of Litigation Proposals in Two Major Territorial Disputes

The second dispute depicted by Figure 5.5 is that over Pulau Batu Puteh, an island claimed by both Singapore and Malaysia. After multiple rounds of bilateral negotiations demonstrated the inefficacy of bilateral negotiations, the disputants elected to attempt litigation as early as 1998.¹⁷² However, the final submission of the Pulau Batu Puteh case to the ICJ occurred in 2003, a year after the ICJ ruled on another of Malaysia's territorial claims, that against Indonesia over the islands of Pulau Ligitan and Pulau Sipadan.¹⁷³ A publication by Malaysia's Ministry of Foreign Affairs makes the connection explicit: "In 1998, consensus was reached on the text of the Special Agreement. At this juncture, however, Malaysia and Singapore mutually agreed to shelve the issue of BP for some time to enable Malaysia to attend to a separate and unrelated 'Case Concerning Sovereignty Over Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia...The interregnum lasted nearly five years until the dispute with Indonesia was finally settled in December 2002'" (Mohamad 2009, 3-4). In other words, though Singapore and Malaysia had informally agreed on ICJ adjudication for Pulau Batu Puteh, the formal submission was delayed in order to allow Malaysia to settle another dispute first.¹⁷⁴ In Figure 5.5, we see a small but noticeable increase in the predicted probabilities

¹⁷² "Joint communique of the Government of the Republic of Singapore and the Government of Malaysia," *Business Times (Singapore)*, February 18, 1998.

¹⁷³ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, I.C.J. Reports 2008, 12, available at <http://www.icj-cij.org/files/case-related/130/130-20080523-JUD-01-00-EN.pdf>.

¹⁷⁴ Even in light of the 1998 agreement, there was considerable controversy surrounding the formulation of the Special Agreement in 2002-2003. Nevertheless, this controversy took the form of debating whether Singapore would honor a prior agreement, rather than on whether a new agreement could be obtained. See, for instance, Lydia Lim, "Pedra Branca: Key step forward today; Singapore and Malaysia will sign an accord in KL to refer the dispute over the island to International Court of Justice," *The Straits Times (Singapore)*, February 6, 2003; Nik Imran Abdullah, "Fix Date for Signing SA, Singapore Urged," *New Straits Times (Malaysia)*, January 2, 2003, 2.

immediately after the victory in the Pulau Ligitan/Pulau Sipadan case, along with immediate adjudication attempts. As such, my model accurately reflects the small but important role of another court case in determining the timing of litigation proposals in the Pulau Batu Puteh case. This role pales in comparison to that of settlement failure, which drives the upward “path” to litigation represented in Figure 5.5. Yet both combine to create an accurate “picture” of the timing of litigation in this particular dispute.

5.5 Conclusion

My results suggest some surprising conclusions regarding the importance of past experiences in judicial forums for predicting when states will propose litigation again. First, as my theory claims, settlement failure is a primary driving force behind the timing of litigation proposals. My statistical and graphical analyses depict this clearly. Second, the effects of settlement failure are only subtly modified by past experience. Figure 5.5 shows that, when past experiences matter, they depend upon levels of settlement failure. This finding is a significant refinement of the existing literature. Moreover, states with positive prior experiences differ only slightly from states with no experience or negative experiences. I find the most important interactions to be between settlement failure and within-dispute changes in judicial experience. Further caveats are necessary. The number of disputes (32) and claim-states (43) affected by prior experiences with international courts or arbitral panels is small compared to the rest of my sample. Thus, the experiential logic only applies to a small portion of territorial disputes due to the rarity of litigation in general. Additionally, most disputes that are affected by judicial experiences are distinct for other reasons. Two of the particular disputes mentioned above were

substantially altered by judicial decisions within the same dispute, while another involved one state explicitly requesting a delay from another state in order to close out an ICJ case. The most credible conclusion is that, where the timing of litigation proposals is concerned, past experiences with binding settlement methods matter most when they are directly related to the dispute at hand or when they occur during an ongoing claim.

My brief examination of cases where past judicial decisions changed present state attitudes towards litigation suggests some refinements to the literature on the subject of judicial experience. For example, in the Pulau Batu Puteh dispute, the timing of Malaysia's proposals for litigation was not due to a belief that a past victory against Indonesia might predict future success. Instead, Malaysia's showed its preference for subsequent litigation before either case (Mohamad 2009). The delay, so instrumental for explaining the timing of the eventual court case, was due to Malaysia's desire to maintain only one costly court case at a time. Trust and beliefs regarding the probability of victory were secondary where timing was concerned. Similarly, Colombia's initial conduct in the San Andres y Providencia dispute was that of a state entirely opposed to litigation. This changed somewhat when the ICJ, in the same case, used a preliminary judgment to establish undisputed Colombian sovereignty over the most important disputed islands. Colombia's qualified support for ICJ adjudication after this judgment can be explained, not with reference to updated beliefs concerning the probability of future victory, but by simply noting that the prior judgment handed Colombia the territory it coveted. The rest of the case mattered less, and thus the risks of adjudication were less pressing for Colombia after 2007. As such, future research into the effects of past court cases on

present behavior might look into how judicial decisions directly alter the status quo of territorial disputes, outside of the preference-based logic.

CHAPTER 6:

CONCLUSION

6.1 Overview

When do states prefer to adjudicate or arbitrate their territorial claims? Current literature on the subject of litigation in territorial disputes is limited in its ability to explain timing (Allee and Huth 2006; Gent and Shannon 2011; Hensel 2001; Hensel et al. 2008; Huth, Croco, and Appel 2013; Lefler 2015; Owsiak and Mitchell 2017; Powell 2015; Powell and Wiegand 2014; Wiegand and Powell 2011). Relatively time-invariant variables like territorial salience, regime type, and legal systems cannot, by definition, explain why a disputant prefers litigation at one time point within a dispute and not at another. This dissertation addresses these limitations. Settlement failure is key. As more and more settlement attempts fail, states obtain increasingly compelling information that bargaining deadlock exists. International courts and arbitral panels are a good option for breaking this deadlock. Risks intrinsic to these institutions are sometimes outweighed by the costs of sustaining a deadlocked dispute. Thus, as settlement failure mounts over time, the attractiveness of legal settlement methods increases.

However, the primary theoretical contribution of this work lies in considering the interaction between settlement failure and other variables as a primary determinant of the timing of litigation proposals. Not all disputants process the information supplied by settlement failure in the same way, and these distinctions are vital for understanding

timing. In this work, I have demonstrated that the location of the disputed territory, legal arguments, and past experiences with international judicial institutions all transform state responses to settlement failure. When the disagreement deals with offshore islands, states are most likely to litigate near the beginning of the dispute because such disputes generally involve broad interests in economic extraction that are not served by a lengthy, deadlocked dispute. Clear legal arguments accelerate the “path” to litigation by creating legal focal points around which policy may be coordinated. Finally, past judicial experiences have a complicated relationship with settlement failure and preferences for litigation. I find that past victories in court encourage new litigation, but only when settlement failure is reasonably high and only when said victories occur within the same dispute or time period. In each of these cases, some aspect of the disputed territory or disputants changes the way that states respond to the failure of nonbinding settlement methods. Indeed, combining settlement failure with the aforementioned factors allows conditions that are mostly time invariant to exert substantial influence over the timing of litigation proposals.

I conclude this work by outlining its contributions, both to the scholarship on territorial disputes and to policymakers. My emphasis on timing opens up new frontiers of research into the causes of peaceful settlement and litigation in territorial disagreements. For policymakers, I provide a useful account of when opponents are likely to prefer binding settlement methods, and I also give some insight into why states use international courts in the first place. I end this final chapter with a brief review of future research topics suggested by this work.

6.2 Scholarly Contributions

By focusing on timing, I provide additional insights into the mechanisms behind litigation. Rather than focusing on state-level characteristics, my work explains when a state is most likely to propose litigation within a dispute. This is an important addition to the existing literature, which mostly focuses on determining why litigation happens at all and which states are most likely to adjudicate or arbitrate.¹⁷⁵ My work treats state preferences in territorial disputes as a variable factor that evolves over time in response to changes in the settlement process. This creates a recognizable “path” to litigation whose course is affected by certain important explanatory factors. By treating the relationship between settlement failure and litigation proposals as a coherent progression, my theory and empirical analyses provide intuitive and compelling models of the peaceful settlement of territorial disputes. In this way, my work conceives of peaceful settlement preferences as the product of an intelligible temporal development.

My treatment of settlement failure is also novel. Many prior works discussing settlement failure treat it as a unidimensional variable whose influence decays over time (Gent and Shannon 2011; Hensel et al. 2008; Lefler 2015). Indeed, works like Gent and Shannon (2011) and Hensel et al. (2008) treat settlement failure as a mere control variable, rather than as a vital explanatory factor. I advance the literature’s treatment of settlement failure in two ways. First, I treat it as a multidimensional concept. The phrase, “five rounds of negotiations have failed,” contains, not one, but two pieces of information: negotiations have failed, and they have failed five times. Independent of the

¹⁷⁵ See 178 for a list of these sources.

latter piece of information, knowledge of the failure of a particular settlement procedure tells policymakers a great deal about whether that procedure will achieve results in the future. Thus, the quantitative analyses in this dissertation include both the number of failed settlement attempts and the type of failed settlement method. This design allows me to capture the information available to policymakers as they decide whether or not to propose litigation.

Second, I do not assume that policymakers forget about past settlement attempts according to a regular schedule. Certainly, there is some truth to the assertion that political memories are short. Yet the question of how short they actually are is nearly impossible to answer, and arbitrary assumptions regarding the “half-life” of failed settlement attempts may hinder comprehension of the evolution of state preferences over the course of a dispute. Consequently, I make no assumptions in this regard. I claim only that a multidimensional measurement of settlement failure constitutes the primary causal engine behind the timing of litigation proposals. My empirical results support this assertion and throw into question any work on territorial litigation that fails to include settlement failure as an independent variable.

I also refine existing works on the relationship between litigation proposals and geography, legal arguments, and past experiences in judicial institutions. All three of these explanatory variables interact significantly with settlement failure, thus altering the path to litigation in a complex manner. In many ways, my work on geography and legal arguments simply builds upon prior research by showing that these variables increase the effects of settlement failure and accelerate preferences for litigation within disputes (Huth, Croco, and Appel 2013; Owsiak and Mitchell 2017). However, the effect of the

interaction between past experiences and settlement failure is much less clear. I demonstrate that past experiences matters, yet in a very subtle and unstable way. Prior judicial victories and defeats influence the probability of future litigation primarily when they are connected, either directly or temporally, to the dispute at hand. In other words, it may not be that judicial wins and losses in general condition state attitudes in future disputes. Instead, new judicial rulings within an ongoing dispute seem to change how states view new court cases, but only when settlement failure is substantial. New victories in court generally accelerate the path to litigation, while defeats make the same path more difficult. Moreover, these changes may have more to do with tactical delays and legal changes in the scope of the disputed territory than with assumptions conflating past experience with future performance. In any case, more research, perhaps of a qualitative nature, is needed to ascertain precisely how prior judicial experiences matter for dispute resolution in the context of territorial disputes.

Finally, my use of hybrid regression to isolate the effects of change over time constitutes notable improvement over existing approaches in the literature. By overcoming the limitations of the conventional fixed effects model, hybrid logistic regression models allow me to isolate how changes over time in settlement failure alter the probability of litigation proposals, even while including time invariant subjects and variables in the equation (Allison 2009; Bell and Jones 2015). I thereby resolve problems posed by the rarity of litigation and the time-invariant nature of legal arguments and geography. It is to be hoped that these models grow in popularity within the political science profession, as they are flexible and robust to time-invariant confounders. They are also complex enough to report the difference between the effect of change over time

in a variable and the effect of between-subject variation in the same, an attribute that often generates surprising insights into how variables like regime type alter state preferences. Finally, and perhaps most obviously, isolating the effects of within-state change in a variable is crucial to testing hypotheses about timing. Without this model characteristic, I would risk conflating differences between states in my variables of interest with more vital differences between time points within a state. At the very least, this dissertation is the first work, to my knowledge, that employs hybrid models on panel data covering territorial disputes.

6.3 Policy Relevance

Some aspects of this dissertation are useful for policymakers, as well. If one is interested in bringing an opponent to court, knowing that substantial levels of settlement failure are necessary for even a marginal chance of successful litigation is vital. Moreover, perhaps the clearest policy recommendation that this work can make is that, when involved in a contention over offshore territories, litigation is most likely to succeed early in the dispute after a small amount of settlement failure. Allowing disputes over island territories to drag on for years or decades appears to cause the likelihood of litigation to decay. Clear legal arguments and, to an extent, positive prior experiences with the international judiciary seem to aid in creating preferences for litigation. Yet all of these factors depend upon the failure of nonbinding settlement methods in order to bring litigation about. To summarize, policymakers should evaluate both where the settlement process is at and what other factors promote preferences for litigation to determine the likelihood that the preference for litigation will be shared by an opponent.

My work is likely more helpful for policymakers involved in the construction and legitimization of international legal and judicial institutions. For instance, my examination of the interaction between settlement failure and legal arguments shows that clear arguments accelerate the path to litigation in territorial disputes. Logically, this implies that codifying and rectifying the uncertain legal precepts governing title to land could help bring more states to court while also promoting out-of-court settlements (Huth, Croco, and Appel 2013; Mitchell and Powell 2011). At the very least, work in this regard could lower the incidence of costly, protracted territorial disputes where unclear title breeds bargaining deadlock and potential violence. This assertion is supported by my results for offshore territories. Laws governing maritime delimitations are far clearer than those governing territorial boundaries, and this, along with other aspects of offshore disputes, pushes states into quicker proposals adjudication and arbitration. Legal clarification is thus one way to improve the likelihood that states will use legal settlement methods to resolve their disputes.

Finally, my work correctly depicts territorial disputes as dynamic processes. Prior work shows that democracies may be more likely to litigate than non-democracies, but one consistent result in my models is that positive changes in levels of democracy over time are instrumental for producing proposals for litigation. Similarly, changes in settlement failure, judicial experience, and even treaty commitments may cause a disputant to prefer adjudication or arbitration where no such preference existed before. Thus, there may be recognizable periods of “ripeness” for adjudication immediately

following such changes.¹⁷⁶ Proposals for litigation could be timed to coincide with these periods. Consequently, scholars of territorial disputes and policymakers of all types should be mindful, not just of the basic attributes of states or disputes, but also of how territorial claims and claimants evolve over time. In recent years, territorial disputes in Africa, Eastern Europe, South and East Asia, and the Americas have stubbornly defied efforts at nonbinding dispute resolution.¹⁷⁷ In these cases, where settlement failure is high, litigation may be the quickest and most effective method for restoring peace and renewing international cooperation. What is unimaginable at the beginning of a territorial dispute may become quite likely after years of fruitless settlement activity.

6.4 Future Research

My research opens up a new frontier of questions regarding evolution and timing in territorial disputes. While I identify settlement failure as a main cause of the timing of litigation, other factors also come into play in my analyses. My results for regime type and treaty commitments indicate that changes in these variables over time can engender preferences for adjudication and arbitration. However, the amount of democratization or the type of new treaty commitments necessary to make litigation genuinely likely remains an open question. Indeed, the effects of these and other variables may also depend upon

¹⁷⁶ For more on the concept of “ripeness” in international disputes, see Zartman (1985).

¹⁷⁷ “Arunachal Pradesh issue with China resolved; has India avoided another Doklam standoff?,” *International Business Times India*, January 9, 2018; “Claimants in South China Sea dispute need to work out a collective strategy,” *The Business Times Singapore*, January 4, 2018; “RPT - Slovenia Expects Croatia to Abide by Judgment on Piran Bay Dispute – Foreign Minister,” *Sputnik News Service*, October 17, 2017; “Sudan renews UN complaint against Egypt over Halayeb border region, *Xinhua General News Service*,” (Khartoum), January 8, 2018.

levels of settlement failure. I analyzed interactions between settlement failure and variables closely related to the characteristics of legal settlement methods. Other variables like democracy or material capabilities may have similar interactions, and these represent a potentially fruitful area for future inquiry.

Other aspects of my analyses point to empirical puzzles further afield. For instance, attempting nonbinding third party methods seems to have an outsized, usually positive effect on the likelihood of litigation proposals. Because I focus on settlement failure, I do not explore why this might be in great detail. However, as occurred in the Hanish Islands dispute between Yemen and Eritrea and the Aouzou Strip dispute between Libya and Chad, it is likely that third party mediators often attempt to use international courts and arbitral panels as conflict management tools. Indeed, in both of the above disputes, mediators used judicial institutions as a sort of ultimatum. By proposing agreements requiring adjudication or arbitration if a set time period expires without a settlement, mediators can encourage out-of-court settlements while tentatively guaranteeing that some form of binding settlement will result from the peace process. Alternatively, conflict managers could discourage litigation because they desire to control the settlement process without judicial aid. The scope and effectiveness of this form of conflict management remains unexplored, however.

My theoretical framework is applicable to other issue areas within the study of international relations. There is no reason why settlement failure would not function the same way in, for instance, trade disputes or other, non-territorial interstate contentions. Settlement failure still indicates the presence of bargaining deadlock, regardless of the asset in dispute. Legal arguments, past experiences with judicial institutions, and the

nature of the disputed assets can still modify how disputants process settlement failure and develop preferences for litigation. Alternatively, an exploration of assets and disputants that do not respond to settlement failure at all could be enlightening.

Nonetheless, my theory has the potential to function in many international contexts that are not governed by compulsory adjudication and regular enforcement. Additionally, since I do not focus on successful litigation or compliance, my theory may apply to an even wider scope of problems than even this. Even domestic disputes often undergo a nonbinding settlement process that, when it fails, may result in a court case.

In sum, this dissertation demonstrates that settlement failure is a primary determinant of the timing of litigation proposals in territorial disputes. Factors like geography, legal arguments, and judicial experience modify this calculus. My emphasis on timing, a novel approach to measuring settlement failure, and my use of hybrid regression all advance scholarly understanding of the dynamic nature of the territorial settlement process. But my findings also contain policy relevant findings, such as the importance of holding a dynamic view of territorial disputes and the utility of clarifying laws governing the acquisition of title to land. Finally, my work has the potential to encourage future inquiry into the study of the timing of litigation in territorial disputes and beyond. The dynamics of settlement failure are likely transformed by more than just the variables presented here. And, it is possible to apply my theory of settlement failure to other issue areas at the international and domestic levels. Thus, my work extends scholarly understanding of the dynamics of settlement failure underlying litigation in territorial disputes while opening up new lines of inquiry for future scholars of international adjudication and arbitration.

APPENDIX A:
SUMMARY STATISTICS FOR CHAPTER 3

A.1 Summary Statistics Tables and Figures

TABLE A.1

CROSS TABULATION OF LITIGATION PROPOSAL AND OFFSHORE ACROSS
FULL SAMPLE, 1945-2012

<i>Litigation Proposal</i>	<i>Offshore</i>		Total
	No	Yes	
No	3,004	990	3,994
Yes	119	103	222
Total	3,123	1,093	4,216

TABLE A.2

CROSS TABULATION OF LITIGATION PROPOSAL AND NEGOTIATIONS
ATTEMPTED ACROSS FULL SAMPLE, 1945-2012

<i>Litigation Proposal</i>	<i>Negotiations Attempted</i>		Total
	No	Yes	
No	1,184	2,813	3,997
Yes	47	178	225
Total	1,231	2,991	4,222

TABLE A.3

CROSS TABULATION OF LITIGATION PROPOSAL AND NONBINDING THIRD
PARTY ATTEMPTED ACROSS FULL SAMPLE, 1945-2012

<i>Litigation Proposal</i>	<i>Nonbinding Third Party Attempted</i>		Total
	No	Yes	
No	3,191	806	3,997
Yes	133	92	225
Total	3,324	898	4,222

TABLE A.4

CROSS TABULATION OF LITIGATION PROPOSAL AND MID ATTEMPTED
ACROSS FULL SAMPLE, 1945-2012

<i>Litigation Proposal</i>	<i>MID Attempted</i>		Total
	No	Yes	
No	1,725	1,490	3,215
Yes	31	83	114
Total	1,756	1,573	3,329

TABLE A.5

CROSS TABULATION OF OFFSHORE AND PRIOR TYPES ACROSS FULL
SAMPLE, 1945-2012

Disputed Territory Offshore?	<i>Prior Types</i>				Total
	0	1	2	3	
No	588	1,102	790	643	3,123
Yes	180	396	461	56	1,093
Total	768	1,498	1,251	699	4,216

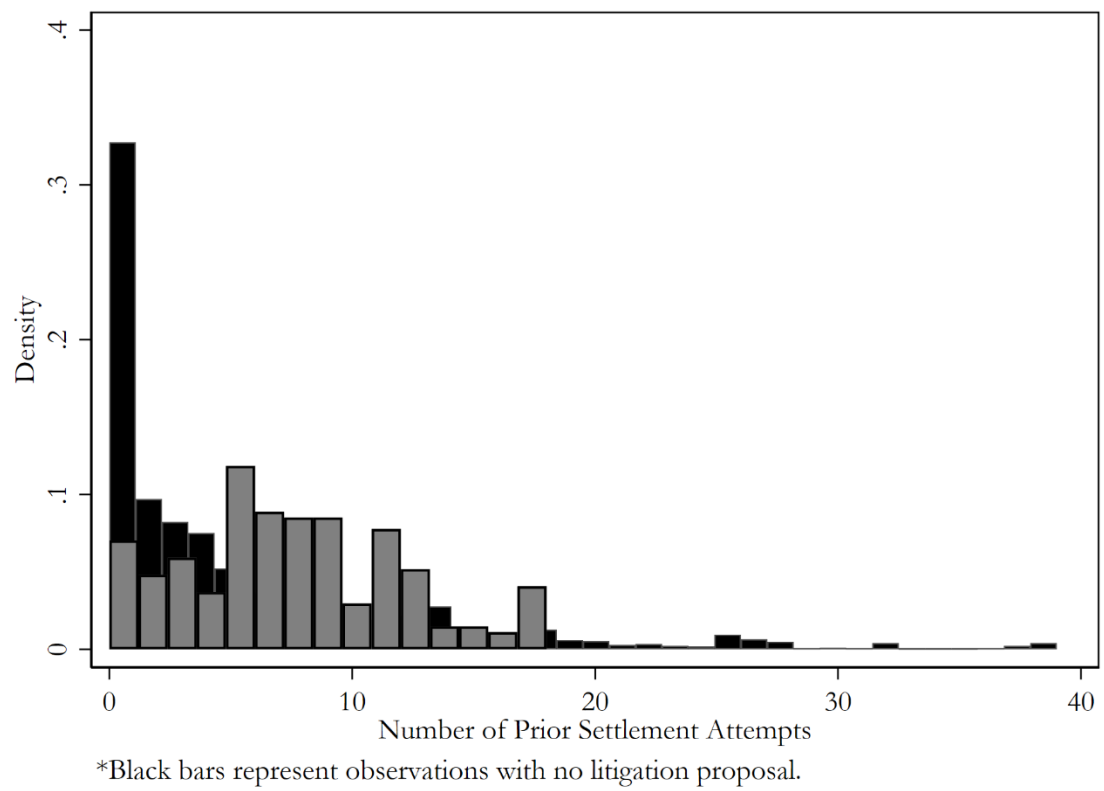


Figure A.1: Histogram: Prior Attempts by Litigation Proposal

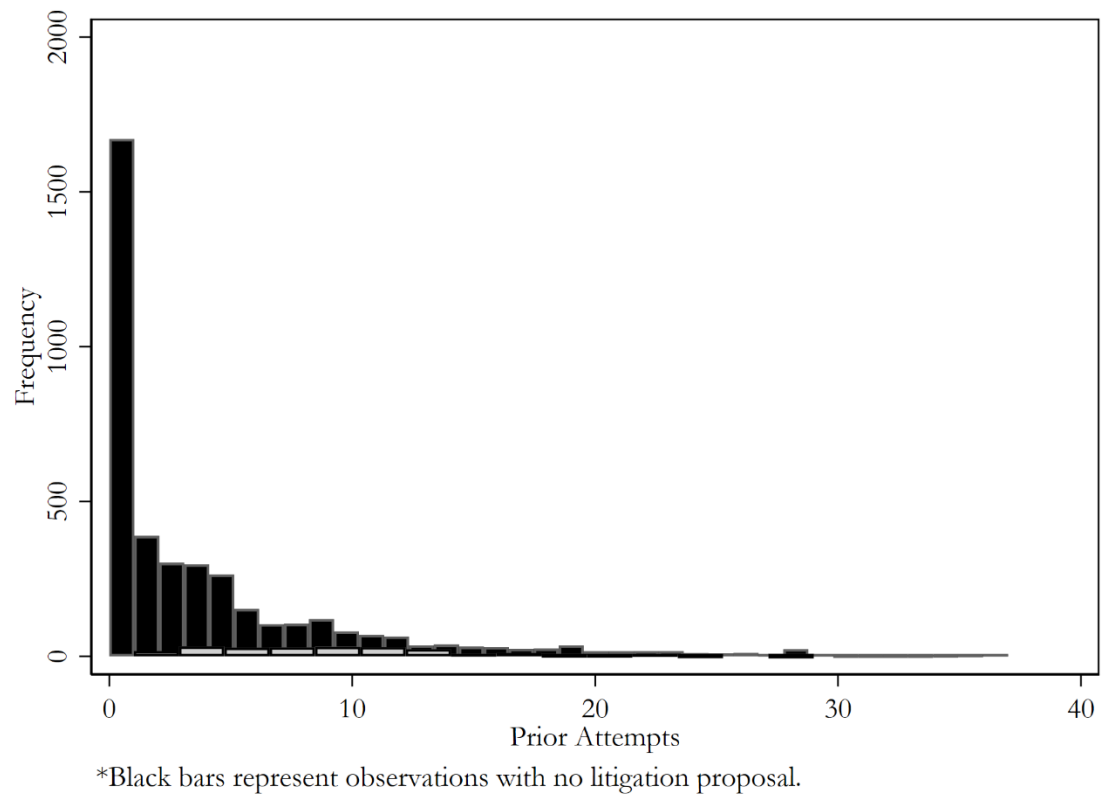


Figure A.2: Frequency Histogram of Prior Attempts With and Without Litigation Proposals

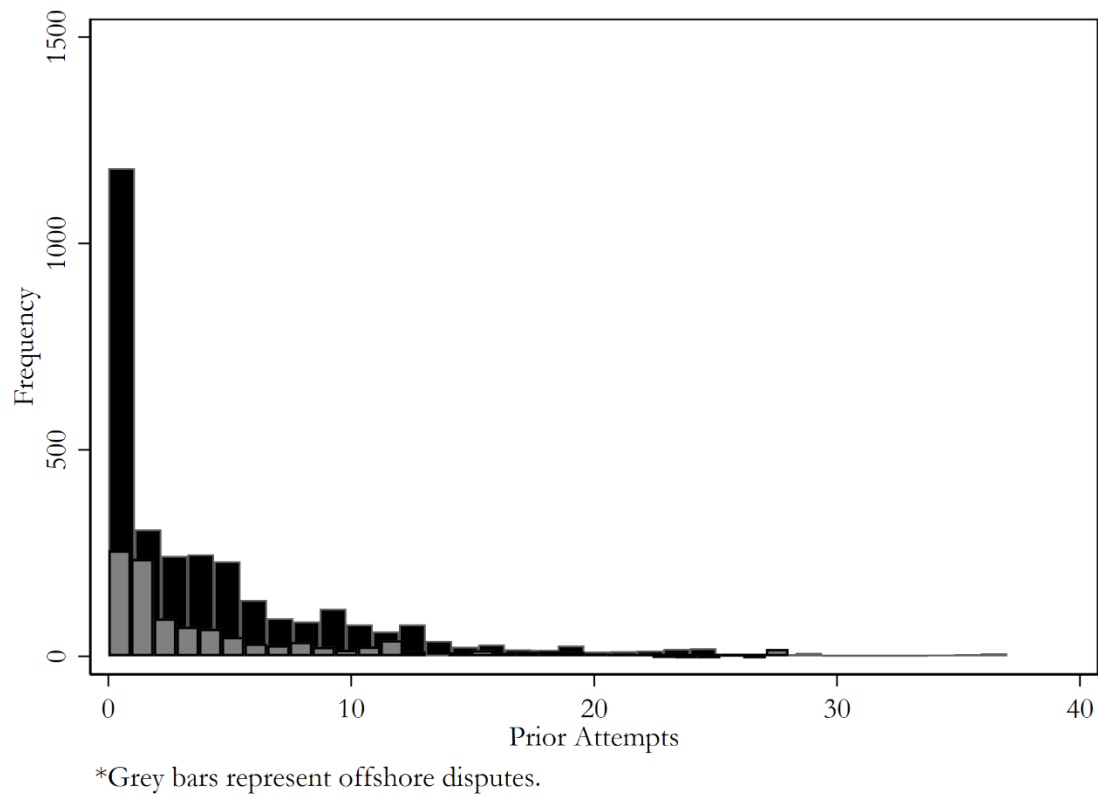


Figure A.3: Frequency Histogram of Prior Attempts Across Land-Based and Offshore Disputes

TABLE A.6

SUMMARY STATISTICS FOR ALL VARIABLES USED IN EMPIRICAL
ANALYSIS ACROSS FULL SAMPLE, 1945-2012

Variable	Mean	Std. Dev.	Min	Max
<i>Litigation Proposal</i>	0.053	0.225	0.000	1.000
<i>Prior Peaceful Settlement Attempts</i>	4.849	6.198	0.000	37.000
<i>Prior MIDs</i>	1.837	3.655	0.000	28.000
<i>Negotiations Attempted</i>	0.708	0.455	0.000	1.000
<i>Nonbinding Third Party Attempted</i>	0.213	0.409	0.000	1.000
<i>MID Attempted</i>	0.473	0.499	0.000	1.000
<i>Prior Attempts</i>	5.561	6.910	0.000	39.000
<i>Prior Types</i>	1.446	0.971	0.000	3.000
<i>Joint Democracy</i>	0.231	0.421	0.000	1.000
<i>Power Parity</i>	0.815	0.153	0.500	1.000
<i>Global Pacific Settlement Commitments</i>	1.961	1.075	0.000	6.000
<i>Regional Pacific Settlement Commitments</i>	0.996	1.542	0.000	9.000
<i>Tangible Salience</i>	3.746	1.484	0.000	6.000
Dyad-Level Means				
<i>Prior Peaceful Settlement Attempts</i>	4.718	4.504	0.000	33.563
<i>Prior MIDs</i>	1.840	3.470	0.000	22.069
<i>Negotiations Attempted</i>	0.717	0.356	0.000	1.000
<i>Nonbinding Third Party Attempted</i>	0.230	0.372	0.000	1.000
<i>MID Attempted</i>	0.466	0.448	0.000	1.000
<i>Joint Democracy</i>	0.234	0.350	0.000	1.000
<i>Power Parity</i>	0.813	0.153	0.518	0.999
<i>Global Pacific Settlement Commitments</i>	2.025	1.012	0.000	6.000
<i>Regional Pacific Settlement Commitments</i>	1.135	1.573	0.000	8.000
<i>Tangible Salience</i>	3.776	1.470	0.000	6.000
<i>Intangible Salience</i>	4.012	1.201	1.000	6.000
<i>Offshore</i>	0.259	0.438	0.000	1.000
<i>Islamic Law Dyad</i>	0.412	0.680	0.000	2.000
<i>Dispute Age</i>	16.612	14.367	0.000	68.000
<i>Year</i>	39.061	18.621	0.000	70.000

APPENDIX B:
SUMMARY STATISTICS FOR CHAPTER 4

B.1 Summary Statistics Tables

TABLE B.1

CROSS TABULATION OF LITIGATION PROPOSAL AND LEGAL ARGUMENTS
ACROSS FULL SAMPLE, 1945-2012

<i>Litigation Proposal</i>	<i>Legal Arguments</i>			Total
	Ambiguous	Disadvantage	Advantage	
No	2,894	823	846	6,563
Yes	233	63	47	343
Total	5,127	886	893	6,906

TABLE B.2

CROSS TABULATION OF NEGOTIATIONS ATTEMPTED AND LEGAL
ARGUMENTS ACROSS FULL SAMPLE, 1945-2012

<i>Legal Arguments</i>	<i>Negotiations Attempted</i>		Total
	No	Yes	
Ambiguous	1,242	3,885	5,127
Weak Arguments	245	641	886
Strong Arguments	288	605	893
Total	1,775	5,131	6,906

TABLE B.3

CROSS TABULATION OF NONBINDING THIRD PARTY ATTEMPTED AND
LEGAL ARGUMENTS ACROSS FULL SAMPLE, 1945-2012

<i>Legal Arguments</i>	<i>Nonbinding Third Party Attempted</i>		Total
	No	Yes	
Ambiguous	3,711	1,416	5,127
Weak Arguments	549	337	886
Strong Arguments	563	330	893
Total	4,823	2,083	6,906

TABLE B.4

SUMMARY STATISTICS FOR PEACEFUL SETTLEMENT ATTEMPTS ACROSS
LEVELS OF LEGAL ARGUMENTS FOR FULL SAMPLE, 1945-2012

Peaceful Settlement Attempts When Legal Arguments are:	N	Mean	Std. Dev.	Median	Min	Max
Ambiguous	5,127	6.179	7.967	3	0	48
Weak	886	6.133	7.093	4	0	32
Strong	893	4.49	5.287	3	0	29

TABLE B.5

SUMMARY STATISTICS FOR ALL VARIABLES ACROSS FULL SAMPLE, 1945-
2012

Variable	Mean	Std. Dev.	Min	Max
<i>Litigation Proposal</i>	0.046	0.210	0.000	1.000
<i>Peaceful Settlement Attempts</i>	0.000	5.360	-20.352	30.310
<i>Negotiations Attempted</i>	0.000	0.282	-0.985	0.967
<i>Nonbinding Third Party Attempted</i>	0.000	0.250	-0.985	0.960
<i>Legal Arguments</i>	0.387	0.704	0.000	2.000
<i>Judicial Experience</i>	0.000	0.154	-0.950	0.967
<i>Democracy</i>	0.000	0.128	-0.647	0.463
<i>Capabilities</i>	0.000	0.013	-0.091	0.141
<i>Global Treaty Agreements</i>	0.000	0.572	-3.750	2.267
<i>Regional Treaty Agreements</i>	0.000	0.710	-3.652	2.964
<i>Past Fight</i>	0.000	0.146	-0.907	0.800
Subject-Level Means				
<i>Peaceful Settlement Attempts</i>	5.641	4.931	0.000	20.352
<i>Negotiations Attempted</i>	0.762	0.319	0.000	1.000
<i>Nonbinding Third Party Attempted</i>	0.303	0.386	0.000	1.000
<i>Judicial Experience</i>	0.039	0.406	-1.000	1.000
<i>Democracy</i>	0.419	0.280	0.015	0.909
<i>Capabilities</i>	0.025	0.047	0.000	0.269
<i>Global Treaty Agreements</i>	2.694	0.852	0.000	5.000
<i>Regional Treaty Agreements</i>	2.614	2.772	0.000	10.000
<i>Past Fight</i>	0.108	0.274	0.000	1.000
<i>Year</i>	36.152	19.487	0.000	70.000
<i>Dispute Age</i>	19.350	15.913	0.000	70.000

APPENDIX C:
SUMMARY STATISTICS FOR CHAPTER 5

C.1 Summary Statistics Tables

TABLE C.1

CROSS TABULATION OF LITIGATION PROPOSAL AND JUDICIAL
EXPERIENCE ACROSS FULL SAMPLE, 1945-2011

<i>Litigation Proposal</i>	<i>Judicial Experience</i>			Total
	Negative	No Experience	Positive	
No	561	7,544	773	8,878
Yes	39	317	68	424
Total	600	7,861	841	9,302

TABLE C.2

CROSS TABULATION OF JUDICIAL EXPERIENCE AND NEGOTIATIONS
ATTEMPTED ACROSS FULL SAMPLE, 1945-2011

<i>Judicial Experience</i>	<i>Negotiations Attempted</i>		Total
	No	Yes	
Negative	177	423	600
None	2,335	5,526	7,861
Positive	197	644	841
Total	2,709	6,593	9,302

TABLE C.3

CROSS TABULATION OF JUDICIAL EXPERIENCE AND NONBINDING THIRD
PARTY ATTEMPTED ACROSS FULL SAMPLE, 1945-2011

<i>Judicial Experience</i>	<i>Nonbinding Third Party Attempted</i>		Total
	No	Yes	
Negative	419	181	600
None	5,999	1,862	7,861
Positive	625	216	841
Total	7,043	2,259	9,302

TABLE C.4

SUMMARY STATISTICS FOR PEACEFUL SETTLEMENT ATTEMPTS ACROSS
LEVELS OF LEGAL ARGUMENTS FOR FULL SAMPLE, 1945-2012

Peaceful Settlement Attempts When Judicial Experience is:	N	Mean	Std. Dev	Median	Min	Max
Negative	600	5.343	7.578	2	0	33
None	7,861	5.256	6.752	3	0	46
Positive	841	7.570	8.886	5	0	39

TABLE C.5

SUMMARY STATISTICS FOR ALL VARIABLES ACROSS FULL SAMPLE, 1945-

2011

Variable	Mean	Std. Dev.	Min	Max
<i>Litigation Proposal</i>	0.046439	0.210445	0	1
<i>Peaceful Settlement Attempts</i>	5.58E-09	4.386207	-17.5818	25.49231
<i>Judicial Experience</i>	3.81E-10	0.143117	-0.95238	0.967742
<i>Negotiations Attempted</i>	-1.62E-09	0.289689	-0.98387	0.96875
<i>Nonbinding Third Party Attempted</i>	-4.04E-10	0.213124	-0.98462	0.961538
<i>Capabilities</i>	-5.24E-11	0.010528	-0.0912	0.082043
<i>Global Treaty Commitments</i>	-4.00E-09	0.590639	-3.78049	2
<i>Regional Treaty Commitments</i>	2.65E-09	0.679867	-2.67308	2.963636
<i>Past Fight</i>	3.03E-10	0.118152	-0.98413	0.809524
<i>Democracy</i>	7.89E-10	0.11253	-0.6382	0.475441
Subject-Level Means				
<i>Peaceful Settlement Attempts</i>	4.982706	4.459123	0	20.35484
<i>Negotiations Attempted</i>	0.712831	0.34758	0	1
<i>Nonbinding Third Party Attempted</i>	0.220084	0.355315	0	1
<i>Capabilities</i>	0.024409	0.044264	5.27E-06	0.239115
<i>Global Treaty Commitments</i>	2.704881	0.990863	0	6
<i>Regional Treaty Commitments</i>	1.943515	2.186916	0	9.97561
<i>Past Fight</i>	0.106834	0.285436	0	1
<i>Democracy</i>	0.389989	0.263494	0.014533	0.907572
<i>Judicial Experience</i>	-0.0311	0.319808	-1	1
<i>Year</i>	36.15233	19.48738	0	70
<i>Dispute Age</i>	19.35027	15.91322	0	70

BIBLIOGRAPHY

1. Abbott, Kenneth W. and Duncan Snidal. "Why States Act through Formal International Organizations." *Journal of Conflict Resolution* 42, no. 1 (1998): 3-32.
2. Allee, Todd L. and Paul K. Huth. "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover." *American Political Science Review* 100, no. 2 (2006): 219-234.
3. Allison, Paul D. *Event History and Survival Analysis*. 2nd ed. Thousand Oaks, CA: SAGE Publications, Inc., 2014.
4. ———. *Fixed Effects Regression Models*. Thousand Oaks, CA: Sage Publications, 2009.
5. Alter, Karen. *The New Terrain of International Law: Courts, Politics, Rights*. Princeton: Princeton University Press, 2014.
6. ———. "Screening Power: International Organizations as Informative Agents." In *Delegation and Agency in International Organizations*, edited by Hawkins, Darren G., David A. Lake, Daniel L. Nielson and Michael J. Tierney, 312-338. New York: Cambridge University Press, 2006.
7. Anderson, Malcolm. *Frontiers: Territory and State Formation in the Modern World*. Cambridge: Polity Press, 1996.
8. Ásgeirsdóttir, Áslaug and Martin Steinwand. "Dispute Settlement Mechanisms and Maritime Boundary Settlements." *Review of International Organizations* 10, no. 2 (2015): 119-143.
9. Bell, Andrew and Kelvyn Jones. "Exploring Fixed Effects: Random Effects Modeling of Time Series Cross Sectional and Panel Data." *Political Science and Research Methods* 3, no. 1 (2015): 133-153.
10. Bilder, Richard B. "International Dispute Settlement and the Role of International Adjudication." In *International Law: Classic and Contemporary Readings*, edited by Ku, Charlotte and Paul F. Diehl, 233-256. Boulder, CO: Lynne Rienner, 1998.
11. Black, Henry Campbell. *A Dictionary of Law*. St. Paul, MN: West Publishing Co., 1910.
12. Brunet-Jailly, Emmanuel. *Border Disputes: A Global Encyclopedia* [3 Volumes]. Santa Barbara: ABC-CLIO, 2015. <http://lib.myilibrary.com?ID=815442>.

13. Burgis, Michelle L. *Boundaries of Discourse in the International Court of Justice: Mapping Arguments in Arab Territorial Disputes*. Leiden and Boston: Martinus Nijhoff Publishers, 2009.
14. Cassese, Antonio. *International Law*. 2nd ed. Oxford: Oxford University Press, 2005.
15. Charney, Jonathan I. "Third Party Dispute Settlement and International Law." *Columbia Journal of Transnational Law* 36, no. 1-2 (1997): 65. <https://search.proquest.com/docview/1839997052>.
16. Clapham, Andrew. *Brierly's Law of Nations*. 7th ed. Oxford: Oxford University Press, 2012.
17. Coppedge, Michael, John Gerring, Staffan I. Lindberg, Svend Erik Skaaning, Jan Teorell, David Altman, Frida Andersson, et al. *V-Dem Codebook V7 Varieties of Democracy (V-Dem) Project*, 2017.
18. Crawford, James. *Brownlie's Principles of Public International Law*. 8th ed. Oxford: Oxford University Press, 2012.
19. Damis, John. *Conflict in Northwest Africa: The Western Sahara Dispute*. Stanford, California: Hoover Institution Press, 1983.
20. Fearon, James D. "Rationalist Explanations for War." *International Organization* 49, no. 3 (1995): 379-414.
doi:10.1017/S0020818300033324. http://journals.cambridge.org/abstract_S0020818300033324.
21. Fischer, Dana D. "Decisions to use the International Court of Justice: Four Recent Cases." *International Studies Quarterly* 26, no. 2 (1982): 251-277.
22. Franck, Thomas M. "The Stealing of the Sahara." *American Journal of International Law* 70, (1976): 694-721.
23. Gamble, John King and Dana D. Fischer. *The International Court of Justice: An Analysis of A Failure*. Lexington Books. Lexington, MA: Heath, 1976. <http://www.econis.eu/PPNSET?PPN=01981884X>.
24. Garret, Geoffrey and Barry R. Weingast. "Ideas, Interests, and Institutions: Constructing the European Community's Internal Market." In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, edited by Goldstein, Judith and Robert Keohane, 173-206. Ithaca: Cornell University Press, 1993.
25. Gelman, Andrew and Jennifer Hill. *Data Analysis using Regression and Multilevel, Hierarchical Models*. 9th ed. Cambridge: Cambridge Univ. Press, 2008.
26. Gent, Stephen and Megan Shannon. "Choosing the Ties that Bind: Decision Control and the Pursuit of Binding Conflict Management." 55, no. 5 (2011): 710-734.

27. Ginsburg, Tom and Richard H. McAdams. "Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution." *William and Mary Law Review* 45, no. 4 (2004): 1229-1339.
28. Goertz, Gary. *Social Science Concepts*. Princeton: Princeton University Press, 2006.
29. Goertz, Gary, Paul F. Diehl, and Alexandru Balas. *The Puzzle of Peace: The Evolution of Peace in the International System*. Oxford: Oxford University Press, 2016.
30. Gold, Peter. *Gibraltar: British Or Spanish?* London: Routledge, 2005.
31. Grossman, Herschel I. *Peace and War in Territorial Disputes*. NBER Working Paper Series. Cambridge, Mass: National Bureau of Economic Research, 2004. <http://www.econis.eu/PPNSET?PPN=391924206>.
32. Haller-Trost, Renate. *The Territorial Dispute between Indonesia and Malaysia Over Pulau Sipadan and Pulau Ligitan in the Celebes Sea: A Study in International Law*. Durham: International Boundaries Research Unit, 1995.
33. Hensel, Paul. *Coding Manual for Territorial Claims Data Issue Correlates of War (ICOW) Project* 2013.
34. Hensel, Paul R. "Contentious Issues and World Politics: The Management of Territorial Claims in the Americas, 1816-1992." *International Studies Quarterly* 45, no. 1 (2001): 81-109.
35. ———. *Multilateral Treaties of Pacific Settlement (MTOPS) Data Set, Version 1.4*, 2005.
36. Hensel, Paul R. and Sara McLaughlin Mitchell. "Issue Indivisibility and Territorial Claims." *GeoJournal* 64, no. 4 (2005): 275-285.
37. Hensel, Paul R., Sara McLaughlin Mitchell, Thomas E. Sowers, and Clayton L. Thyne. "Bones of Contention: Comparing Territorial, Maritime, and River Issues." *Journal of Conflict Resolution* 52, no. 1 (2008): 117.
38. Hodges, Tony. *Western Sahara: Roots of a Desert War*. Westport, CN: Lawrence Hill & Company, 1983.
39. Huth, Paul K. *Standing Your Ground: Territorial Disputes and International Conflict*. Ann Arbor: University of Michigan Press, 1996.
40. Huth, Paul K., Sarah E. Croco, and Benjamin J. Appel. "Bringing Law to the Table: Legal Claims, Focal Points, and the Settlement of Territorial Disputes since 1945." *American Journal of Political Science* 57, no. 1 (2013): 90-103. doi:10.1111/j.1540-5907.2012.00607.x.
41. Jennings, Robert Y. *The Acquisition of Territory in International Law*. Manchester: Manchester University Press, 1963.

42. Joffé, George. "Frontiers in North Africa." In *Boundaries and State Territory in the Middle East and North Africa*, edited by Blake, Gerald H. and Richard N. Schofield, 24-53. The Cottons, Cambridgeshire, U.K.: Middle East and North African Studies Press, 1987.
43. Johns, Leslie. "Courts as Coordinators: Endogenous Enforcement and Jurisdiction in International Adjudication." *Journal of Conflict Resolution* 56, no. 2 (2012): 257-289.
44. ———. *Strengthening International Courts: The Hidden Costs of Legalization*. Ann Arbor: University of Michigan Press, 2015.
45. Kadir, Mohamad. *Malaysia's Territorial Disputes-Two Cases at the ICJ*. Kuala Lumpur: Institute of Diplomacy and Foreign Relations (IDFR) Ministry of Foreign Affairs, Malaysia, 2009.
46. Kahler, Miles. "Legalization as Strategy: The Asia-Pacific Case." *International Organization* 54, no. 3 (2000): 549-571.
doi:10.1162/002081800551325. http://journals.cambridge.org/abstract_S0020818300441159.
47. Kahneman, Daniel. "Evaluation by Moments: Past and Future." In *Choices, Values, and Frames*, edited by Kahneman, Daniel and Amos Tversky, 693-708. New York: Cambridge University Press, 2000.
48. Keohane, Robert. *Power and Governance in a Partially Globalized World*. 1st ed. Abingdon, Oxon: Routledge Ltd., 2002.
doi:10.4324/9780203218174. <http://www.tandfebooks.com/isbn/9780203218174>.
49. Keohane, Robert O. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press, 1984.
50. Keohane, Robert O. and Lisa L. Martin. "The Promise of Institutional Theory." *International Security* 20, no. 1 (1995): 39-51. <http://www.jstor.org/stable/2539214>.
51. Klein, Natalie, ed. *Litigating International Law Disputes*. Cambridge: Cambridge University Press, 2014.
52. Lefebvre, Jeffrey. "Red Sea Security and the Geopolitical-Economy of the Hanish Islands Dispute." *The Middle East Journal* 52, no. 3 (1998): 367-385.
53. LeFebvre, Rebecca K. "Interests and Identities in Peace Negotiations: Nigeria, Cameroon, and the Bakassi Peninsula." *African Social Science Review* 6, no. 1 (2013). http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:bsc:&rft_dat=xri:bsc:rec:iibp:00436696.
54. Lefler, Vanessa A. "Strategic Forum Selection and Compliance in Interstate Dispute Resolution." *Conflict Management and Peace Science* 32, no. 1 (2015): 76-98.

55. Lim, C. L. "The Uses of Pacific Settlement Techniques in Malaysia-Singapore Relations." *Melbourne Journal of International Law* 6, no. 2 (2005): 313-341. <http://search.informit.com.au/fullText;res=AGISPT;dn=20072900>.
56. Llamzon, Aloysius P. "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice." *European Journal of International Law* 18, no. 5 (Nov, 2007): 815-852.
doi:10.1093/ejil/chm047. <https://search.proquest.com/docview/203105298>.
57. Long, J. Scott. *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks, CA: Sage Publications, 1997.
58. Marshall, Monty G. and Keith Jagers. *Polity IV Project: Political Regime Characteristics and Transitions, 1800-2010*. College Park: Center for Systemic Peace, University of Maryland, 2011.
59. Martin, Lisa L. and Beth A. Simmons. "Theories and Empirical Studies of International Institutions." *International Organization* 52, no. 4 (1998): 729-757.
doi:10.1162/002081898550734. http://journals.cambridge.org/abstract_S0020818398440554.
60. Merrills, J. G. *International Dispute Settlement*. 4th ed. Cambridge: Cambridge University Press, 2005.
61. Mitchell, Sara McLaughlin. "A Kantian System? Democracy and Third Party Conflict Resolution." *American Journal of Political Science* 46, no. 4 (2002): 749-759.
62. Mitchell, Sara McLaughlin, Kelly M. Kadera, and Mark J. C. Crescenzi. "Practicing Democratic Community Norms: Third Party Conflict Management and Successful Settlements." In *International Conflict Mediation: New Approaches and Findings*, edited by Bercovitch, J. and S. S. Gartner, 243-264. New York: Routledge, 2008.
63. Mitchell, Sara McLaughlin and Emilia Justyna Powell. *Domestic Law Goes Global: Legal Traditions and International Courts*. Cambridge: Cambridge University Press, 2011.
64. Mitchell, Sara McLaughlin and Paul R. Hensel. "International Institutions and Compliance with Agreements." *American Journal of Political Science* 51, no. 4 (2007): 721-737. doi:10.1111/j.1540-5907.2007.00277.x. <http://www.ingentaconnect.com/content/bpl/ajps/2007/000000051/00000004/art00002>.
65. O'Connell, Mary Ellen. *The Power and Purpose of International Law*. Oxford: Oxford University Press, 2008.
66. Owsiak, Andrew P. and Sara McLaughlin Mitchell. "Conflict Management in Land, River, and Maritime Claims." *Political Science Research and Methods* (2017): 1-19.
doi:10.1017/psrm.2016.56.

67. Plant, Glen. "Territorial Sovereignty-Islands-Delimitation of Single Maritime Boundary, Including Territorial Seas-Effect of Prior Third-Party Decisions Not Constituting Res Judicata." *American Journal of International Law* 96, no. 1 (2002): 198-210.
68. Plaut, Martin. "A Clash for Control in the Shipping Lanes." *The World Today* 52, no. 2 (1996): 46-47. <http://www.jstor.org/stable/40475780>.
69. Powell, Emilia Justyna. "Islamic Law and International Law: Peaceful Resolution of Disputes." University of Notre Dame: Book Manuscript 2018.
70. ———. "Islamic Law States and Peaceful Resolution of Territorial Disputes." *International Organization* 69, no. 4 (2015): 777-807.
71. Powell, Emilia Justyna and Krista E. Wiegand. "Strategic Selection." *Journal of Peace Research* 51, no. 3 (May, 2014): 361-374. doi:10.1177/0022343313508969. <http://journals.sagepub.com/doi/full/10.1177/0022343313508969>.
72. Ricciardi, Matthew M. "Title to the Aouzou Strip: A Legal and Historical Analysis." *Yale Journal of International Law* 17, (1992): 301-488.
73. Richard H. McAdams and Janice Nadler. "Coordinating in the Shadow of the Law: Two Contextualized Tests of the Focal Point Theory of Legal Compliance." *Law & Society Review* 42, no. 4 (2008): 865-898. doi:10.1111/j.1540-5893.2008.00361.x. <http://www.jstor.org/stable/29734157>.
74. Sarkees, Meredith Reid and Frank Whelon Wayman. *Resort to War: A Data Guide to Inter-State, Extra-State, Intra-State, and Non-State Wars, 1816-2007*. Washington, D.C: CQ Press, 2010.
75. Schelling, Thomas C. *The Strategy of Conflict*. Cambridge, MA: Harvard University Press, 1960.
76. Schunck, Reinhard. "Within and between Estimates in Random Effects Models: Advantages and Drawbacks of Correlated Random Effects and Hybrid Models." *The Stata Journal* 13, no. 1 (2013): 65-76.
77. Senese, Paul D. and John A. Vasquez. *The Steps to War: An Empirical Study*. Princeton: Princeton University Press, 2008.
78. Shannon, Megan. "Preventing War and Providing the Peace?" *Conflict Management and Peace Science* 26, no. 2 (2009): 144-163.
79. Shaw, Malcolm N. *International Law*. 7th ed. Cambridge: Cambridge University Press, 2014.
80. Simmons, Beth. "Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes." *Journal of Conflict Resolution* 46, no. 6 (2002): 829-856.

81. ———. “Rules Over Real Estate: Trade, Territorial Conflict, and International Borders as Institution.” *Journal of Conflict Resolution* 49, no. 6 (2005): 823-848.
82. Singer, J. David, Stuart A. Bremer, and John Stuckey. “Capability Distribution, Uncertainty, and Major Power War, 1820-1965.” In *Peace, War, and Numbers*, edited by Russett, Bruce M., 19-48. Beverly Hills, CA: Sage, 1972.
83. Spelliscy, Shane. “The Proliferation of International Tribunals: A Chink in the Armor.” *Columbia Journal of Transnational Law* 40, no. 1 (2001): 143.
84. St. John, Ronald Bruce. “The Bolivia-Chile-Peru Dispute in the Atacama Desert.” *Boundary and Territory Briefing* 1, no. 6 (1994). <http://catalog.hathitrust.org/Record/003161838>.
85. Sumner, Brian T. “Territorial Disputes at the International Court of Justice.” *Duke Law Journal* 53, no. 6 (2004): 1779-1812. <http://www.jstor.org/stable/40040452>.
86. Tir, Jaroslav. “Territorial Diversion: Diversionary Theory of War and Territorial Conflict.” *The Journal of Politics* 72, no. 2 (2010): 413-425.
87. Toft, Monica Duffy. “Territory and War.” *Journal of Peace Research* 51, no. 2 (2014): 185-198.
doi:10.1177/0022343313515695. <http://journals.sagepub.com/doi/full/10.1177/0022343313515695>.
88. Untawale, Mukund G. “The Kutch-Sind Dispute: A Case Study in International Arbitration.” *International and Comparative Law Quarterly* 23, no. 4 (1974): 818-839.
doi:10.1093/iclqaj/23.4.818. http://journals.cambridge.org/abstract_S0020589300032322.
89. Van Aert, Peter. “The Beagle Conflict.” *Island Studies Journal* 11, no. 1 (May 1, 2016): 307-314. <https://search.proquest.com/docview/1953814965>.
90. Vasquez, John A. *The War Puzzle*. Cambridge: Cambridge University Press, 1993.
91. Von Glahn, Gerhard and James Larry Taulbee. *Law among Nations: An Introduction to Public International Law*. 10th ed. New York: Pearson, 2013.
92. Wetter, J. Gillis. “The Rann of Kutch Arbitration.” *The American Journal of International Law* 65, no. 2 (1971): 346-357.
doi:10.2307/2199243. <http://www.jstor.org/stable/2199243>.
93. Wiegand, Krista E. “Bahrain, Qatar, and the Hawar Islands: Resolution of a Gulf Territorial Dispute.” *Middle East Journal* 66, no. 1 (2012): 79-96.
94. ———. *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement*. Athens, GA: University of Georgia Press, 2011.

95. Wiegand, Krista E. and Emilia Justyna Powell. "Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes." *Journal of Conflict Resolution* 55, no. 1 (2011): 33-59.
96. Zartman, I. William. *Ripe for Resolution: Conflict and Intervention in Africa*. Oxford: Oxford University Press, 1989.
97. Zunes, Stephen and Jacob Mundy. *Western Sahara: War, Nationalism, and Conflict Irresolution*. Syracuse Studies on Peace and Conflict Resolution. Syracuse: Syracuse University Press, 2010. <http://www.jstor.org/stable/j.ctt1j2n9vz>.