Law, Settlement Failure, and the Timing of Litigation in Interstate Territorial Disputes

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ABSTRACT

When do states attempt formal adjudication or arbitration to resolve their territorial disputes? Existing scholarship on this issue focuses on the effects of factors like democracy, power, and past experiences on the likelihood of preferences for litigation. However, these factors remain relatively constant over time, meaning that they often have difficulty explaining why states in a dispute choose to attempt legal settlement methods at one time point and not at another. I theorize that settlement failure, defined as the inability of nonbinding settlement methods to resolve a disagreement, is the primary motivation for litigation attempts. Litigation is a peaceful way of breaking bargaining deadlock, but the uncertainty and risk intrinsic to legal settlement methods mean that states only try litigation when settlement failure provides ample evidence that the deadlock is intractable. Clear legal arguments accelerate the "path" to litigation by creating legal focal points suitable for policy coordination. Such focal points create expectations of a "baseline" distribution of territory that states may "lock in" via litigation when settlement failure is high. Hybrid logistic regressions analyzing a sizeable sample of interstate territorial disputes, 1945-2012, support these theoretical claims.

THEORY

Settlement Failure

-Provides information regarding the existence of bargaining deadlock.
-Indicates a desire for dispute resolution.

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Clear Legal Arguments

-Increases the effects of settlement failure by creating a legal focal point.
-Legal focal points accelerate policy coordination around adjudication/arbitration by providing a "default" distribution of territory

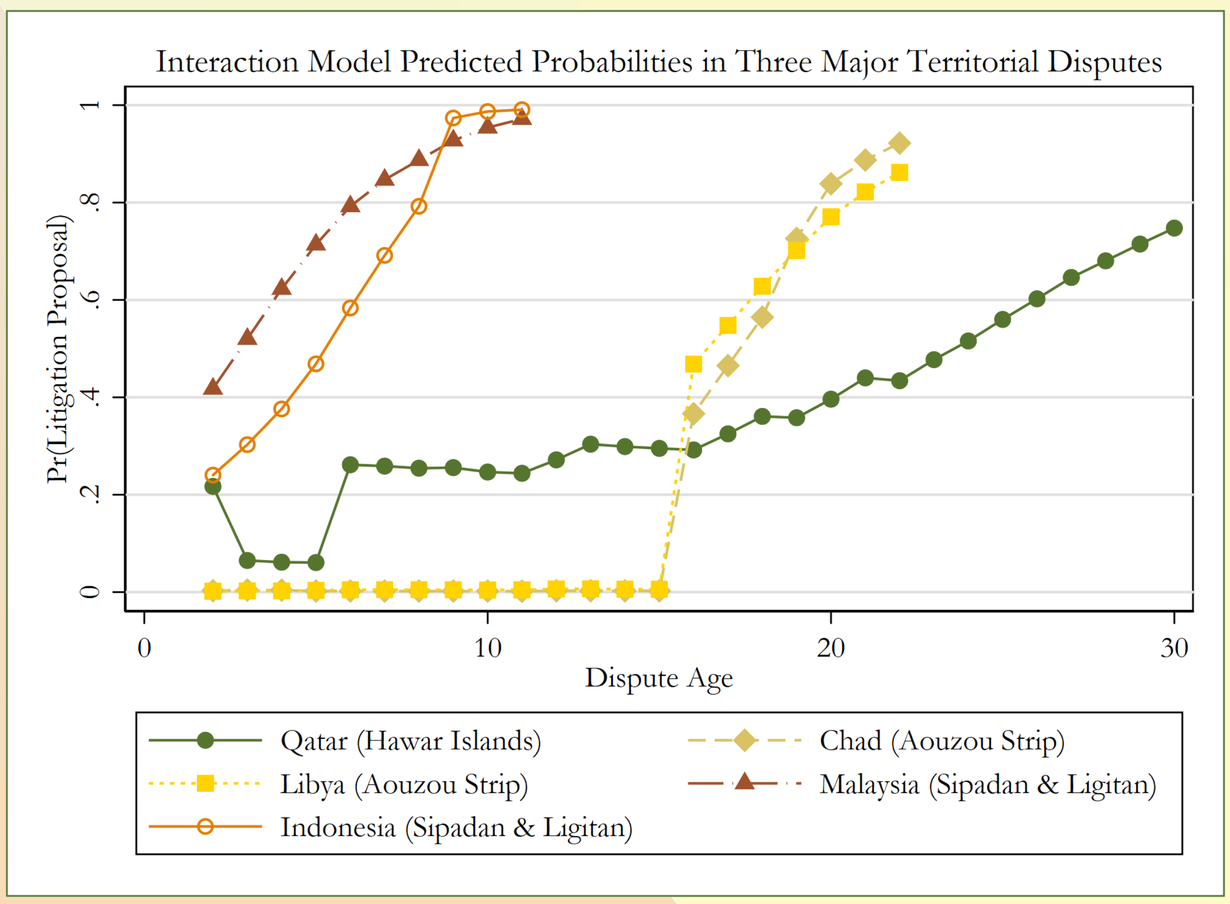
Litigation Proposal

-States prefer adjudication/arbitration when mounting settlement failure indicates that nonbinding settlement methods cannot break bargaining deadlock.
-Amounts to accepting the "default" distribution of territory if a legal focal point exists.

RESULTS

Independent Variable	B	S.E.	B	S.E.
Peaceful Settlement Attempts (PSA)	0.207***	(0.037)	0.183***	(0.041)
PSAxWeak Legal Arguments			0.156*	(0.085)
PSAxStrong Legal Arguments			0.238**	(0.102)
Negotiations Attempted (NA)	0.946**	(0.435)	0.048	(0.465)
NAxWeak Legal Arguments			8.062**	(3.828)
NAxStrong Legal Arguments			8.256***	(2.697)
Nonbinding 3rd Party Attempted (NBTPA)	1.825***	(0.387)	1.532***	(0.424)
NBTPAxWeak Legal Arguments			3.154	(2.47)
NBTPAxStrong Legal Arguments			3.443	(2.561)
Weak Legal Arguments	0.297	(0.743)	-1.253	(1.05)
Strong Legal Arguments	-0.251	(0.733)	-1.879*	(1.011)

- p<.1 ** p<.05 *** p<.01
- Results obtained via hybrid logistic regression (Between-Within method). Unit of analysis is the disputant-year. Controls include judicial experience, material capabilities, levels of democracy, global and regional treaty commitments, and past conflictual relations. Controls also included disputant-level means of all time-variant variables and two measures of time (year and dispute age).



CONCLUSIONS

1. All dimensions of settlement failure (type and number) are significant predictors of litigation proposals. On its own, the clarity of legal arguments is not.
2. Clear legal arguments, and particularly strong legal arguments, augment the effects of attempting negotiations and mounting peaceful settlement attempts over time.
3. Clarity matters more than legal advantage.