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Bringing Law to the Table: Legal Claims, Focal Points, and the Settlement of Territorial Disputes Since 1945

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In this article, we argue that international law can help state leaders reach a settlement in territorial disputes by suggesting a focal point for negotiations. International law is more likely to serve as a focal point when the legal principles relevant to the dispute are clear and well established and when one of the states in the dispute has a stronger legal claim to disputed territory. When these two conditions are present, we expect the state with a legal advantage to push for and receive favorable terms of settlement. In our analysis of all negotiated settlements in territorial disputes from 1945 to 2000, we find strong support for the importance of international law in influencing the terms of settlements. States with a strong legal advantage are more likely to secure favorable terms, whereas states lacking a strong legal claim are more likely to receive unfavorable terms.

For many scholars of international relations, the old adage "might makes right" is an accurate description of the bargaining process by which states reach settlements over disputed territory. Leaders who possess greater military capabilities will press for favorable terms at the negotiating table, confident that their superior capabilities (and the implicit threat that they will employ them if necessary) will grant them the leverage to compel their adversary into accepting their demands. Given this logic, many would expect that leaders of strong states should consistently secure more favorable terms than weaker states.

The historical record, however, presents a more complicated picture. For instance, among the 78 negotiated territorial dispute settlements reached between 1945 and 2000, only 29 of them occurred when there was a large military imbalance between the disputants (i.e., one state had at least 75% of the dyad's capabilities). A similar pattern emerges when we consider the terms of settlement. Of the 31 times when the leader of the challenger state has a military advantage, he receives favorable terms only six times. Likewise, of the 47 times when the leader of the target state has a military advantage, she receives favorable terms just 18 times. Taken together, these weak empirical relationships challenge the conventional wisdom that military power is a pivotal factor explaining outcomes in bilateral negotiations over security issues. They also suggest two related questions: namely, when are negotiated settlements likely to materialize and, if they do, when will one state receive more favorable terms than its adversary?

In this article, we posit that international law provides answers to both of these questions. Specifically, when the legal principles relevant to the territorial dispute are clear *and* one state's legal claim is significantly stronger than its opponent's, the division of territory suggested by international law will emerge as a focal point that both leaders will have incentives to accept. In this way, international law not only makes a final agreement more likely, but it also increases the likelihood that the terms will favor the party with a stronger legal claim. Our empirical tests confirm our theoretical expectations: when international law is able to suggest a focal point, settlements are almost 50% more likely to occur, and leaders with a legal advantage are at least 158% more likely to secure favorable terms.

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Our findings offer at least five contributions. First, this article represents one of the first attempts to specify the conditions (i.e., clarity and asymmetry) under which international law will be most capable of helping states resolve territorial disputes peacefully. In doing so, we advance existing theories on international law and focal points, which neither sufficiently consider that international law's capacity to serve as a focal point varies across disputes in systematic ways nor allow for states to have varying degrees of legal advantage.

Second, applying our theoretical framework to the outcome and terms of final settlements represents the first quantitative assessment of law's potential to serve in this manner in the realm of security. Indeed, to our knowledge there are only a few studies that even consider the general topic of the terms of negotiated settlements (e.g., Mitchell and Hensel 2007). Third, by applying our theory to territorial disputes, we join the small (yet growing) number of scholars who address the role of international law in the context of security policy (Fortna 2003; Huth, Croco, and Appel 2011; Mitchell and Hensel 2007; Morrow 2007; Simmons 2002). Fourth, we broaden what we mean by international law by including sources other than treaty law (e.g., customary international law, rulings from international judicial bodies, and the writings of legal scholars) that are given considerably less attention by political scientists. Finally, expanding the scope of international law beyond treaty compliance allows us to mitigate problems of selection bias, which can potentially create substantial inference problems for researchers interested in understanding international law (Downs, Rocke, and Barsoom 1996; von Stein 2005; but also see Gilligan 2004 and Simmons and Hopkins 2005).

The rest of this article consists of five sections. First, we briefly introduce the pathway by which states reach a final settlement in territorial disputes. Second, we review the role of focal points in solving coordination and distribution problems. Next, we elaborate on the conditions under which we expect the terms of settlement suggested by international law to emerge as a focal point in territorial disputes and present our hypotheses. We then describe our research design; in the next section we discuss the results of our statistical analyses. Finally, we conclude.

Territorial Disputes

We conceptualize the decision to reach a negotiated bilateral settlement and the distribution of terms as a two-step process once a territorial dispute has emerged between states. A territorial dispute begins when (a) official executive state leaders of one state claim the territory of another state or contest its sovereignty, and (b) in response, the targeted government's leadership rejects the territorial claims of the adversary.[1] In every dispute, there is a state that is dissatisfied with the territorial status quo, which we label as the challenger, and a state that prefers the status quo, which we call the target.[2]

Once the dispute begins, it proceeds over a series of interrelated stages. For our analysis on negotiated settlements, two stages are relevant. We discuss the full process briefly here both to give the reader a sense of the sequential nature of dispute resolutions and to highlight that the opening of talks is a necessary precondition for a final negotiated settlement. First, in any given month, the leaders of the challenger state must choose to pursue negotiations versus either using/threatening force or allowing the dispute to persist (i.e., no explicit foreign policy actions to challenge the territorial status quo).[3] Second, once talks have opened up following the challenger's initiative, the two states can then attempt to reach a final negotiated settlement.[4] It is this second stage—the process of brokering a negotiated settlement and the distribution of the resulting terms—that is the focus of this article.

[1] A summary of each of the disputes, along with information on sources, can be found in Huth and Allee (2002). We utilize this dataset (having updated it through 2000). In identifying the territorial dispute cases, we utilized over 600 English and foreign language sources that included (a) secondary sources on the history of specific disputes, (b) reference books and annual reviews of countries, (c) reports and documents from the United Nations and regional security organizations, (d) government documents and archival materials, (e) Hensel (2001) and other datasets on military conflict (e.g., COW MID dataset: Ghosn, Palmer, and Bremer 2004; COW Territorial Change dataset: Tir et al. 1998; ICB dataset: Brecher and Wilkenfeld 2000), and (f) the database of the International Boundaries Research Unit. We define a negotiation as any formal meeting between state officials with the expressed purpose of discussing the territorial issues between the states.

[2] In a few disputes, both states claim land within their opponent's borders, so both are coded as challengers. In cases like this, we randomly selected one state to serve as the challenger in our analyses.

[3] Importantly, allowing the dispute to persist does not mean the leader of the challenger state has given up on her territorial claims. It simply means she is not actively pursuing a revision of the status quo at that particular point in time. In other work (Huth, Croco, and Appel 2011), we explore this stage in greater detail and find that legally advantaged challengers are more likely to revise the status quo through peaceful means than challengers who lack a strong legal claim.

[4] As a robustness check, we utilize a Heckman estimator to account for the interrelated decision to enter negotiations and the outcome of talks. Our results remain consistent. Although the rho parameter (or the correlation of the error terms between the two equations) is significant, our legal claims variable remains significant (see the online supporting information).

In addition, while we recognize that disputes can be settled outside of bilateral negotiations (i.e., arbitration or adjudication), we focus on negotiated settlements for two reasons. First, bilateral negotiations are far more common: 78 settlements compared to 18 cases of arbitration or adjudication. Second, since our interest is primarily in understanding how legal, political, and security considerations shape the negotiating behavior of *states* (as opposed to third-party institutions), we center our analyses on the peaceful pathway where state leaders are in control of all aspects of the process.[5]

Bargaining and Focal Points

To build our argument on the role international law plays in the peaceful negotiated resolution of territorial disputes, we draw on the rationalist bargaining literature on international cooperation (e.g., Fearon 1998; Garret and Weingast 1994; Krasner 1991; Morrow 1994). We assume, therefore, that leaders bargaining over territory are rational, self-interested actors who seek to maximize their own payoffs when settling a territorial dispute. In this context, we focus on how leaders overcome coordination and distribution problems in order to reach an agreement.[6] These problems are common in territorial disputes for several reasons. First, from a theoretical standpoint, a piece of contested territory can be divided an infinite number of ways, making a number of solutions possible. Second, by virtue of being in a dispute, leaders will have divergent preferences over which of these possible solutions they would accept as the final settlement. Additionally, leaders will often misrepresent their bargaining position since their actual reservation points are private information. Consequently, dispute resolution is often a process consisting of a series of proposals and counterproposals as leaders try to limit concessions while holding out for better terms. Delay, however, is often costly to the disputants. In addition to the potential military costs (e.g., military mobilization, possibility of conflict spirals, etc.), disputes can entail several other costs (e.g., political and economic) that the leader may want to avoid (Simmons 1998). As we discuss in greater detail below, these costs of continued disagreement are one of the reasons why states will want to comply with the focal point suggested by international law (should one exist), even if the proposed settlement does not favor them.

Given the bargaining problems leaders must overcome and the costs of delaying resolution, how do disputants avoid deadlock? Schelling (1960) was one of the first to offer a solution to this problem by invoking the concept of focal points. He argued that if focal points could identify an outcome that is qualitatively distinct from the other possibilities, they could be used as a mechanism for equilibrium selection. Importantly, while Schelling first put forward focal points as a means to solve (pure) coordination games without communication, he also argued that there is a wealth of evidence that they were useful for more common bargaining situations with communication that involve elements of both cooperation and conflict.

Specifically, focal points, Schelling posited, could ameliorate both coordination and distribution problems by providing a way for leaders to "coordinate their expectations." Since many failures to settle stem from the fact that bargaining "includes maneuver, indirect communication, jockeying for position, or speaking to be overheard, or [a confusion of] a multitude of participants and divergent interests," the need for convergent expectations is powerful (Schelling 1960, 74). To overcome these obstacles and reach an agreement, Schelling posited, parties must identify a single point (or narrow range of points) within the bargaining range that neither side expects the other to reject. It is this convergence of expectations that is central to understanding how focal points can help parties solve distribution problems.[7]

A focal point helps the parties' expectations converge by shaping each other's predictions regarding their adversary's reservation point. For example, if a focal point exists that indicates the leader of State A should receive

[5] As a result, a decision in a round of talks to seek a legal resolution of the dispute is treated as a no settlement outcome on the response variable. As a robustness check, however, we recoded arbitration and adjudication as settlements on our response variable for the decision to reach a final agreement. Our results are even stronger for the legal claims variable when reestimated (see supplement).

[6] Although we recognize that enforcement concerns can also prevent states from reaching a settlement agreement in general, we feel our focus on distribution and coordination problems is justified for at least two reasons. First, distribution issues are more relevant to a dispute over territory since, at root, the disagreement turns on how a piece of land should be allocated. Second, we believe that legally based focal points can alleviate enforcement concerns. This process occurs since the signing of a treaty that is based on a focal point invokes additional legal principles (pacta sunt servanda most importantly, but potentially other principles such as state succession, stability of borders, and estoppel). These principles encourage compliance by reinforcing the legality of the original settlement and, in doing so, weakening the bargaining position of any future challengers. The empirical record supports this logic. As Huth (1996) reports in related work, of the 45 settlement agreements reached between 1950 and 1990, only one (Iraq in their dispute with Iran over the Shatt-al-Arab Waterway) did not endure.

[7] Importantly, communication alone cannot help the disputants converge on a single point. Since there is incomplete information, leaders can still bluff about the minimum value they are willing to accept.

90% of the land in question while the leader of State B is only entitled to a mere 10%, State B's leader knows that the leader of State A will not accept B's preferred settlement of a 50/50 split. Given this, Leader B knows he must propose a division that is closer to 90% than 50% to reach a settlement and avoid the costs involved in allowing the dispute to continue. Additionally, the focal point also restricts the ability of a disputant to attempt to raise his share by bluffing; that is, State B cannot credibly demand 60% of the disputed good when the focal point allocates only 10% to him. By narrowing the bargaining range, the focal point solves both the coordination and distribution problems by identifying which of the many possible settlements to start with. It also makes negotiations more efficient by discouraging parties from offering terms their adversaries would reject with certainty. Consequently, even though the existence of a distribution problem necessarily implies that parties have divergent preferences regarding the settlement terms, a focal point that identifies a single solution to the dispute can affect leader behavior.

Recently, political scientists and legal scholars, drawing on Schelling's pioneering work, have argued that international law and international institutions are capable of providing a focal point for leaders who disagree about how to divide an asset (e.g., Allee and Huth 2006; Garrett and Weingast 1994; Ginsburg and McAdams 2004; Keohane and Martin 1995; McAdams and Nadler 2008; Martin and Simmons 1998). In line with this literature, we argue that when international law clearly identifies one state as having superior title to territory (i.e., a strong legal claim), it can serve as a focal point and identify a distribution of territory that can serve as terms of settlement.[8]

International Law and Focal Points

Before applying our theory to the specific context of territorial disputes, it is important to first establish our rationale for why we expect international law to have the potential to provide a focal point for leaders engaged in negotiations. Following this, we describe the two conditions under which we expect leaders to utilize the legally based focal point. We then apply our theory to the settlement of territorial disputes more specifically and present our hypotheses.

First, international law, by virtue of being formalized in various public instruments such as treaties, agreements, and court rulings, is common knowledge among all states.[9] As such, it is a well-known source for leaders to turn to when trying to overcome distribution and coordination problems. Importantly, leaders will have incentives to investigate and assess the merits of their legally based claims to disputed territory, and at least one party will typically have reason to make the legal merits of rival claims to disputed territory public knowledge. If, for example, a leader suspects her state's claims to the territory are strong, she will want to investigate and communicate the relevant legal principles to the adversary and third parties in order to bolster her case. In this way, private information about the strength of the relevant legal principles becomes common knowledge between the disputants as they update their legal assessments based on new information.[10]

Second, international law provides a common set of standards to evaluate opposing claims. This feature is important for resolving the distribution and coordination problems over territory since it provides a means of identifying which of the many potential ways to divide the disputed land the leaders should choose for the final terms of settlement. Although some have challenged international law's ability to serve as an exogenous force on states' behavior (e.g., Goldsmith and Posner 2005), there are several reasons to expect the opposite (Abbott and Snidal 1998; Henkin 1979; Ikenberry 2000; Slaughter, Tulumello, and Wood 1998). First, many of the legal principles relevant to territorial disputes emerged long before the territorial disputes and negotiations we examine here. Second, international law is more than just a reflection of past or current great-power preferences. This is true not only because the roster of great powers changes over time, but also because the number of smaller states has grown considerably in the post-1945 era, and they have exerted some influence on the legal principles. Third, the

[8] By strong legal claim, we mean that a state's legal claim to territory is superior relative to its adversary. We elaborate on this point in the measurement section below.

[9] It is possible, of course, for states to have dissimilar interpretations of the law, at least initially. As Mitchell and Powell (2011) posited, differences in states' domestic legal systems may cause leaders to form different perceptions about the implications of the principles of international law. To account for this possibility, we created variables based on Mitchell and Powell's coding scheme to capture differences in states' domestic legal systems and included them in our models of settlement. Our results remained the same, and the new variables were always insignificant.

[10] Indeed, several important and common legal principles often do not become clear until the dispute is in progress. To invoke principles such as effective control, *uti possidetris juris,* estoppel and *territorium nullius*, states must amass a considerable amount of historical information about their claim to the territory *as well as their adversary's*. Since governments oftentimes do not know what information is in the historical archives of their opponent, they cannot be confident about the *relative* strength of their legal claims until the other side releases some of the information.

decisions passed down by international courts and arbitration panels are viewed by states as largely unbiased, or at least not partial to a particular disputant *ex ante* (e.g., Franck 1990; Voeten 2008; but see Posner and de Figueiredo 2005).

International Law and Territorial Settlements

Having established the nature of the bargaining context and that international law can serve as an exogenous source of focal points, we now turn to exploring international law's role in shaping the terms of territorial dispute settlements. In doing so, we advance existing work, which does not carefully consider the possibility that the effect of international law might not be uniform across all disputes. Instead, scholars often assume, at least implicitly, that international law will often be able to provide a clear solution to the distribution problem at hand. In short, we argue that the bargaining solution suggested by international law will only emerge as a focal point for states if two conditions hold. First, the legal principles relevant to the dispute must be clear and well established. Second, the relative strength of the disputant's legal claims must be asymmetrical. Importantly, *both* conditions must hold in order for a focal point to materialize. Indeed, the second condition is dependent on the first being present: if the relevant legal principles are incapable of suggesting a solution (i.e., they are unclear), neither side will be able to claim a legal advantage.[11] We now address each of these conditions in turn.

First, as other scholars have posited, clarity in the relevant legal principles is often critical for establishing a focal point (e.g., Chayes and Chayes 1995; Ginsburg and McAdams 2004). Leaders may find several legal principles to be relevant to the dispute at hand, but we should not expect all of them to be equally clear. Some laws may have well-established standards by which to measure the strength of a state's legal claims, while others may be subject to considerable debate and competing interpretations by legal bodies and among states. The variation in the clarity of international law is a product of the interplay between the compliance patterns of states, the terms of new international treaties signed by states, as well as the interpretation of legal principles by legal bodies and experts. We expect those legal principles that are well developed and that are interpreted by states and courts in a consistent fashion to play a more prominent role in promoting dispute resolution. Conversely, legal principles that are subject to considerable debate and differing interpretations are unlikely to be helpful in resolving coordination and distribution problems. Without clarity, multiple interpretations of the law are possible, and no single focal point will materialize.

One example of a clear and well-established legal principle in the context of territorial disputes is the thalweg. The thalweg refers to the legal concept that the boundary line should be located in the center of the river's primary navigable channel. Customary state practice has long accepted the thalweg as a guideline for establishing river boundaries, making the general principle well known and understood by leaders. Instead of squabbling over a large number of potential dividing lines across the entire width of the river, the parties can focus on identifying where the main navigation channel lies and then drawing the boundary line accordingly. In contrast, customary state practice is less clear and consistent in relying upon the thalweg to designate sovereignty over islands in rivers. As a result, while the thalweg is a clear legal principle for locating river boundaries, it is less so with respect to determining sovereignty over river islands.

Clear legal principles, however, while important, cannot solve the distribution and coordination problems completely. For an informative focal point to emerge, the legal principles must also favor one party. Only when the legal principles are clear *and* one state's legal claims are significantly stronger than the other's can international law help leaders identify the bargaining solution that reflects the parties' relative legal standing. If neither state can make a compelling legal case for their preferred solution, there is no reason to think that international law will help to solve the distribution problem; neither party will enjoy the bargaining leverage that comes with a legal advantage.

Hypotheses

The preceding logic suggests two hypotheses regarding both leaders' decision to reach a final negotiated settlement agreement and the terms of the agreement. To understand this process, we turn first to a scenario where there is an asymmetry in the strength of the parties' legal claims. For the leader of the state with the legal advantage, settling the dispute is the best option because the terms of any settlement that materializes will, in all likelihood, reflect her legal superiority. Moreover, because both she and

[11] Importantly, lest one think the first condition implies the second, there are several disputes in which only the first condition—clarity of legal principles—holds.

her opponent are aware of this likely outcome, she will be bargaining from a position of strength. Consequently, she should enter negotiations confident that she will have sufficient bargaining leverage to secure a favorable settlement. In light of this, she should have a strong preference to end the dispute and push for favorable terms rather than let it continue.

The focal point will also affect the leader of the state with the weaker claim. While this may seem somewhat counterintuitive since we might expect rational leaders to avoid both recognizing and complying with the law if it does not favor their state, there are, in fact, several reasons why a legally disadvantaged leader should adhere to the law. The first set of reasons has to do with the benefits of accepting the focal point, all of which stem from the costs of allowing a dispute to persist. As Fearon (1998) pointed out, the military costs of continued conflict between states can be sizeable. Even if the states do not have a history of military confrontations, discordant relations can involve other types of costs (e.g., political and economic) that the leader may want to avoid (Simmons 1998). Ending the dispute also creates the possibility of peaceful and cooperative bilateral relations and the associated benefits that come with it (e.g., diplomatic support in other territorial disputes, new bilateral trade, and investment agreements). Finally, settling can also free up resources that would otherwise be tied up in the dispute, allowing the leader to redistribute them to other policy needs. In short, there are multiple reasons why a disadvantaged leader would choose to accept the terms suggested by the focal point. Even if the leader prefers the current territorial status quo in theory, in practice the costs of trying to maintain this position have the potential to be extremely cumbersome. This makes settling a more attractive option when one side has a clear legal advantage.

The second set of reasons stems from the fact that a leader facing an adversary with strong legal claims has little means of recourse. If a focal point exists that favors the adversary, the disadvantaged leader will, by definition, be unable to muster a compelling legal counter to the division of the territory suggested by international law; one side having a legal advantage necessarily implies that the legal principles clearly do *not* favor the other side. Moreover, the leader will also have a difficult time bluffing about his reservation level regarding the distribution of territory.[12] Finally, given that the legal principles are unlikely to change dramatically, refusing to heed the law in the current round in the hopes of gaining a more favorable legal position in the future carries a very low probability of paying off.

Although the leader of the weaker state could ignore its legal standing completely and rebuff the adversary's claims with force, doing so is unlikely to further his territorial goals and carries the risk of negative reactions from third parties. In addition to the costs of using force, opting for military action when the adversary has a clear legal advantage may trigger additional costs from other states (or institutions), such as sanctions or even direct military action. If the law clearly favors one side, third-party observers will feel more confident about the legitimacy of that state's claims and, consequently, will be more willing to come to its aid in the event of a conflict than if the law were more ambiguous. Even if the disadvantaged state does not resort to force, refusing to recognize the law may have significant reputational consequences. A reputation for rejecting international law may discourage potential partners who are not party to the current dispute from cooperating with the state in the future, thereby robbing the state of the possible benefits of cooperation. Consequently, even if the likely settlement will not favor the disadvantaged leader, if a legally based focal point exists, he may have incentives to accept unfavorable settlements out of a concern for maintaining a reputation for complying with or otherwise respecting international law.

As we noted above, a different bargaining situation arises when neither disputant has a strong legal claim to the territory. Although both leaders recognize that reaching a final settlement agreement may benefit them, international law is of little use in terms of helping leaders break the bargaining impasse when there is legal ambiguity. Without the backing of a focal point from international law, leaders will be less sure that they will be able to bring negotiations to a successful conclusion.

In sum, our theoretical argument suggests how international law affects both the decision to pursue and the final terms of a settlement agreement. When legal principles are able to act as a focal point, they can help leaders resolve the coordination and distribution problems by identifying a particular settlement as well as indicating how the disputed territory should be allocated between the two parties in such a settlement. International law can help leaders identify which legal principles are relevant to the dispute. This provides leaders with a way to frame the problem by focusing on evidence and arguments that establish the legal merits of each state's claim to the territory in question. Once these legal principles have been identified, leaders can then begin to craft a settlement

[12]This does not imply that states will refrain from bluffing entirely, only that there is more likely to be a convergence about the distribution of territory when a focal point is present. Indeed, there are, on average, fewer rounds of talks per dispute when there are asymmetric legal claims (8.5 to 5.6).

based on the merits of the legal claims. The above logic suggests the following hypotheses:

> *H1*: Rounds of talks in which one state has superior legal claims are more likely to end in settlement agreements than talks in which neither side has a clear legal advantage.
> *H2*: Leaders of states with strong legal claims are more likely to receive favorable terms in a negotiated settlement agreement than leaders with weak legal claims.

Controls

We also consider several additional factors that may affect both the likelihood of achieving a final settlement and the terms of such agreements.[13] First, it might be expected that leaders are more likely to reach a final negotiated settlement when the dispute is characterized by an imbalance of military capabilities. Likewise, one might also expect leaders of challenger and target states to receive better terms when they are stronger than their opponent. We also include two aspects of the territory that may increase the salience of the disputed land to state leaders. First, if both states either *lack* ethnic ties to the disputed territory, or neither considers the territory to be of strategic value, they will be more likely to reach a final settlement. When predicting the terms of settlement, we utilize a slightly different logic. For instance, when one state has ethnic ties to the disputed territory and the other does not, we believe that the former state will be more likely to receive better terms. The presence of co-ethnics may afford a state bargaining leverage due to the heightened degree of domestic salience it brings to a dispute. By a similar logic, if the land is of strategic value to one state and not the other, then, again, the former state should receive favorable terms in the final settlement. We argue this because if the land is a military asset for one of the states, the leader of that state may be more inclined to adopt an inflexible bargaining position than his adversary.[14]

Third, we also control for regime type and the associated political accountability of leaders to domestic opposition. We expect that dyads made up of nondemocratic states are more likely to reach a negotiated settlement because they are less concerned about the difficulties of securing domestic ratifications for settlement treaties given the weakness generally of legislative bodies in such states. When modeling the terms of settlement, we explicitly test for whether the leader is constrained domestically; that is, we expect that when one state is constrained and the other is not, that state will be more likely to receive better terms. Based on the logic of the "two-level game," the lack of guaranteed political support (and the accompanying heightened risk of punishment) offers bargaining leverage to an executive since she is able to better tie her hands (Putnam 1988).

Fourth, we also include three additional variables in the settlement equation to account for the nature of relations between the disputants. First, we expect that disputes comprised of enduring rivals are less likely to reach an agreement. Second, when a dispute is marked by a recent history of stalemates (i.e., a lack of mutual concessions in negotiations), we believe that the states are less likely to reach a final settlement in the next round of talks. Third, we expect that allied states are more likely to resolve the dispute by negotiated agreements compared to states that do not have common security ties. Finally, to account for the possibility of duration dependence in the settlement equation, we control for the effects of time by including a counter of time to the decision to reach a final agreement within each dispute.

Research Design

In this section, we first describe how we operationalized our two outcome variables and the estimators we used to test our hypotheses. Following this, we discuss how we assessed the relative strength of a state's legal claims in some detail. We then explain how we converted these assessments into the variables we used in each stage of the final analysis (see below for coding rules). We test our hypotheses with a series of statistical tests using our dataset on 165 territorial disputes from 1945 to 2000.[15] First, we model the decision of both parties to end the dispute peacefully through a settlement agreement, an event that occurs in 78 of the 165 disputes (nearly 47%). Because this first equation focuses on the decision to reach an agreement, we test our hypotheses on the 1,140 cases of negotiations during talks in our dataset.[16] We

[13] Coding rules for our control variables can be found in the supporting information.

[14] It is also possible that strategically valuable territory may have the opposite effect by altering the behavior of the leader who does not value the territory for strategic reasons. That is, a leader may be reluctant to concede territory to her adversary if she knows he regards the territory as strategic. We assess the significance of this variable, therefore, using a two-tailed test in our analyses.

[15] As we noted above, the dataset is based on an updated version of Huth and Allee (2002).

[16] Even though there are only 165 disputes, there are 1,140 rounds of talks since disputes can witness multiple instances of negotiations.

code the dependent variable as a 1 if the sides reach a final settlement agreement (i.e., an agreement between states in the absence of direct military threats or use of force that resolves all outstanding territorial claims) and 0 otherwise. Due to the relatively small number of final agreements among the 1,140 rounds of negotiations, we use a rare events logistic regression model (King and Zeng 2001).

Second, we examine the relative levels of concessions made by each of the disputants to measure the terms of final settlement. Following Huth and Allee (2002), concessions fall into one of three categories: major concessions, limited concessions, and no concessions. We define major concessions as those that relinquish claims to a majority if not all of the disputed territory in question, limited concessions include either nonterritorial issues or the loss of less than 50% of the disputed territory, and no concessions simply means that no territory was conceded or that no concessions were made on nonterritorial issues. We then created a dummy variable to capture the relative distribution of the terms of settlement. Specifically, we consider terms to be favorable to a state when its level of concessions is considered to be none or limited, and the adversary makes major concessions. In other words, for the leader of State A to be considered as receiving favorable terms, the concessions made by the leader of State B must be viewed as considerably greater compared to those made by State A. Based on this coding scheme, the challenger received favorable terms 22 times, the target received favorable terms 28 times, and both sides received roughly comparable terms 28 times. To estimate our hypotheses, we used a logistic regression model.

Finally, it is important to consider the possibility of selection effects in both of our tests. First, in the settlement equation, the decision to reach a final settlement agreement may be linked to the initial decision to pursue talks. Second, the terms of settlement may be related to the decision to reach a negotiated settlement agreement.[17] In order to account for this, we reestimated our models using the standard Heckman-selection estimator. For both equations, our results remained consistent.[18]

[17]That is, for example, the unmeasured variables that tap into the motivation of state leaders to seek a settlement may also be related to their willingness to make concessions in a final agreement. If this is the case, then the error terms of the two equations are systematically correlated, which introduces bias into the estimated coefficients in the outcome equation.

[18]Due to space constraints, we do not present the results of the Heckman equations. The rho parameter is not significant, and the results for the legal claims variable remained significant (although slightly weaker for the target). The results are available as part of our replication materials in the supporting information.

Measurement

Given both the novel and central role the international law variable plays in our theory, it is worth elucidating the process we used to construct it. First, once the disputes were identified using the process described above, we needed to assess the strength of each state's legal claims. To do so, we first systematically searched for expert legal assessments from scholars, rulings from international legal bodies, and government documents and archival materials for every territorial dispute. We identified multiple expert sources for each territorial dispute and then coded the legal judgments presented in the sources for each legal principle that was discussed.[19]

We followed several guidelines when determining what constituted the superior legal claims of the state in question. First, we generally did not use public documents or statements by the governments that are parties to a dispute to determine the merits of legal claims.[20] These public sources were often useful for understanding the legal claims put forward by states, but we did not use them for assessing the merits of those legal claims. However, when we were able to identify internal government sources that contained legal analyses and conclusions, we included them to determine the majority views among the expert sources. Second, we had to consider possible bias in legal assessments by scholars who are citizens of one of the countries in the dispute. When these sources present uniformly supportive analyses of their country's legal claims and uniformly negative assessments of the adversary country, we judged that source to be potentially too biased to use in assessing the merits of legal claims. If a national source criticizes his or her own country's legal claims, then we treated that source as sufficiently balanced to include it when determining the majority position as represented in the expert sources.

Once we collected the necessary information, we aggregated the legal principles to establish state-level legal claims for both challenger and target states. We operationalized this variable using a 3-point scale for each state,

[19]Although it is impossible to provide a full list of the nearly 500 sources consulted, a number of sources were useful for analyses of multiple disputes within or across regions, such as Brownlie (1979); Castellino and Allen (2003); Crawford (1979); Cukwurah (1967); Lalonde (2002); Sharma (1997); and Shaw (1986). We also utilized a number of sources from scholars of different nationalities to guard against a Western bias.

[20]Importantly, leaders' internal assessments of their own state's legal positions closely matched the legal assessments provided by the outside expert sources we relied upon. For example, based on archival documents, internal British assessments of their legal claims and those of their opponent's reflect our codings based on the writings of legal scholars over 90% of the time.

where 3 corresponded to strong legal claims, 2 to mixed legal claims, and 1 to weak legal claims. A state received 3 if on all of the relevant legal issues that apply to the dispute, either (1) this state's position is strongly backed by existing legal principles according to the legal experts and sources or (2) a majority of the state's legal claims are judged to be strongly backed, while any remaining legal claims are judged as no worse than mixed (see below). In short, a coding of strong legal claims requires that expert sources judge at least a majority of the state's legal claims favorably and regard none of its claims as weak.

A state has mixed legal claims if, on balance, the expert sources conclude that a state's legal claims to the contested territory are strong in some areas and either ambiguous or weak in others. Ambiguous claims are those in which the expert sources deem the relevant evidence to be either contradictory or incomplete, making the state's legal claims subject to qualification and reservations. Furthermore, the expert sources must agree that any strong legal merits of the state's claim do not compensate for the legal principles associated with the weaker legal claims. Finally, a state received a coding of weak if on the majority of the legal issues relevant to the dispute, the legal sources felt the state's position was either weak or was based on legal merits that were no better than "uncertain."

These state-level data based on the 3-point scale provided the means for coding the final variables used in our statistical analyses. Table 1 presents all possible combinations of our theoretical coding scheme, the actor-level codings for the challenger and target's legal claims, and the resulting dyadic coding for the final variables used our analysis.[21] For example, with respect to the distribution of the state-level codings, in the 165 disputes, we code challengers as having strong legal claims 16 times, mixed legal claims in 77 disputes, and weak legal claims 72 times. On the other hand, targets have strong legal claims in 56 disputes, mixed legal claims 80 times, and weak legal claims 29 times.[22]

[21]Table 1 does not contain a row in which both parties received a state-level coding of 3 because it is not possible for both states to simultaneously have strong claims to title based on the same legal principles. Both states, however, can have either mixed or weak claims to the disputed territory.

[22]We should add that, given that the distribution of strong legal claims between the challenger and target strongly favors the latter, this suggests that legal considerations are not a powerful influence on *dispute onset*. However, without knowing more about the larger population of potential territorial disputes, it is not possible to draw any strong conclusions on this question. It is also worth noting that states have many reasons to challenge that can arise independent of the strength of their legal claims. The territory in question may be valuable from an economic or military standpoint. The land may also be salient for domestic reasons (e.g., citizens may share ethnic ties with people across the disputed border).

TABLE 1 Coding Scheme and Descriptive Statistics for Legal Claims Variables

Theoretical Coding Scheme

Row	State-Level Coding for Challengers	State-Level Coding for Targets	"Challenger Strong Legal Claims" (Stage 1)	"Asymmetric Legal Claims" (Stage 2)
1	1	1	0	0
2	1	2	0	0
3	**1**	**3**	**0**	**1**
4	2	1	0	0
5	2	2	0	0
6	2	3	0	0
7	**3**	**1**	**1**	**1**
8	3	2	0	0

Empirical Distribution of State-Level Legal Claims Across 165 Territorial Disputes

	Challenger State-Level Codings	Target State-Level Codings
Weak	72	29
Mixed	77	80
Strong	16	56

Empirical Distribution of Final Dyadic Variables Across 165 Territorial Disputes Used in the Statistical Analysis

	Challenger Strong Legal Claims	Target Strong Legal Claims	Asymmetric Legal Claims
Total	14	48	62

In the equation modeling the likelihood of reaching a settlement, we used the state-level codings to create a dyadic variable ("Asymmetric Legal Claims") that identifies cases in which one party has a legal advantage over its adversary. To do this, however, we first had to create two dummy variables ("Challenger Strong Legal Claims" and "Target Strong Legal Claims") for the challenger and the target to capture the *relative* legal merits of a state's claims to the disputed territory. When coding the variable for the challenger, for instance, this variable received a 1 if the challenger had superior legal claims compared to the target and a 0 otherwise (3 and 1 in the state-level coding, see Row 7, Table 1). The 0 category for this variable, therefore, consists of all cases where the challenger had weak or mixed legal claims in the state-level codings, irrespective of the target's legal claims. The point of this coding scheme is to create a variable that highlights instances in which a legally based focal point favoring the challenger

(target) is likely to emerge—that is, cases in which the challenger (target) has a clearly superior legal claim. As we see in Table 1, the challenger has strong legal claims in 14 disputes (8.5%), and the target has strong legal claims in 48 disputes (29%). Second, we constructed the final variable used in our analysis by creating a dummy variable that takes on a value of 1 if *either* the challenger or the target has strong legal claims while their opponent has weak or mixed claims in the state-level codings (a condition which holds in 62 disputes, or roughly 39% of the time—see Rows 3 and 7 in Table 1). The variable equals 0 when both sides have mixed or weak claims (which happens in 101 disputes, or 61% of the time). For the terms of settlement equation, we use the "Challenger Strong Legal Claims" and "Target Strong Legal Claims" variables that were used to create the "Asymmetric Legal Claims" variable. As discussed above, we have separate equations for the challengers and targets, making the relative legal codings for each state more appropriate variables.

Empirical Results

Overall, we find statistical and substantive support for our hypotheses on international law. First, in Table 2, we find that leaders are more likely to reach a final agreement when there is an asymmetry in the strength of the disputants' legal claims. Specifically, when the parties lack a legally based focal point, they only reach a settlement 12% of the time compared to almost 17% of the time when there is legal asymmetry.[23] Consequently, disputes in which one party has a clear legal advantage over the other are 49% more likely to be resolved than disputes where neither party has a compelling legal claim to the contested territory (Table 3). This finding offers support for our hypothesis that a focal point based in international law facilitates the process of reaching a final agreement.

In the challenger and target terms of settlement equations, we find even stronger statistical and substantive support for the effects of international law. For example, in the challenger equation (Table 4), we find that when the leader of a challenger state has strong legal claims, she is more likely to receive favorable terms of settlement. Similarly, in the target equation (Table 4), the leader of a target state is also more likely to receive favorable terms of settlement when he has strong legal claims. Regarding the substantive impact, the results are quite strong (Table 5).

[23]The first difference is small, but this is largely expected given the low baseline probability. The baseline is low because of the 1,140 rounds of talks, there are only 78 settlements since negotiated settlements often require multiple rounds of talks before they are concluded.

TABLE 2 Rare Events Logistic Regression Analysis of Decisions to Reach a Negotiated Settlement Agreement

	Coefficient Estimates
International Law	
Asymmetric Legal Claims	0.435
	0.255
	0.088
Control Variables	
No Joint Democracy	0.490
	0.261
	0.060
Military Imbalance	0.805
	0.871
	0.355
Common Security Ties	0.237
	0.272
	0.384
No Joint Ethnic Ties	−0.268
	0.264
	0.311
Enduring Rivals	−1.769
	0.550
	0.001
No Joint Strategic Territory	0.084
	0.283
	0.767
Past Stalemate	−0.552
	0.145
	< 0.000
Constant	−2.513
	0.521
	< 0.000

Note: N = 1,140. Robust standard errors included in second row; p-values in third row.

Specifically, when the leader of a challenger state lacks strong legal claims, she only receives favorable terms 14% of the time, compared to 66% of the time when she has strong legal claims, resulting in a discrete change of about 55%. This means that when a leader of a challenger state has strong legal claims, she is about 389% more likely to receive favorable terms in a negotiated settlement. Regarding the target, the leader of a target state receives favorable terms 24% of the time when he lacks strong legal claims, compared to nearly 63% with strong legal claims, which is a first difference of close to 39%. Again, the substantive impact is quite significant as a leader of a target state with strong legal claims to the disputed territory is 158% more likely to receive favorable terms.

TABLE 3 The Impact of Changes in Variables on the Predicted Probability of Reaching a Negotiated Settlement Agreement

	Predicted Probability of Negotiated Settlement
International Law	
Legal Asymmetry	
No	11.6%
Yes	17.3%
First Difference	5.7%
95% Confidence Interval	(−.4%, 15.1%)
% Change	49%
No Joint Democracy	
No	12.0%
Yes	17.1%
First Difference	5.1%
95% Confidence Interval	(−.7%, 13.6%)
% Change	42.5%
Enduring Rivals	
No	11.7%
Yes	2.2%
First Difference	−9.5%
95% Confidence Interval	(−21.1%, −3.9%)
% Change	81.2%
Past Stalemate	
Low (0)	11.9%
High (3)	2.2%
First Difference	−9.7%
95% Confidence Interval	(−20.3%, −4.1%)
% Change	81.5%

Note: To estimate the predicted probabilities, we move the covariate of interest from low to high while holding all the other covariates at mean or modal values. To compute the first difference, we subtract the baseline predicted probability (covariate at low values) from the predicted probability following the change in the covariate of interest. We then divide the discrete change by the baseline probability and then multiply that by 100 to get the percentage change.

TABLE 4 Logistic Regression Analysis of Receiving Favorable Terms in a Negotiated Settlement Agreement

	Challenger	Target
International Law		
Strong Legal Claims	2.647	1.708
	0.943	0.580
	0.005	0.003
Controls		
Ethnic Ties	1.305	0.679
	0.752	1.051
	0.083	0.518
Political Opposition	1.136	−0.512
	0.800	0.974
	0.156	0.599
Military Balance	−2.049	−0.220
	1.271	0.854
	0.107	0.796
Strategic Territory	—	1.348
	—	1.076
		0.210
Constant	−1.040	−1.036
	0.628	0.588
	0.097	0.078

Note: N = 78. Robust standard errors in parentheses; p-values in third row.
Goodness of Fit (Challenger): Pearson χ^2: 68.94; p-value = .61.
Goodness of Fit (Target): Pearson χ^2: 79.03; p-value = .27.

Overall, we find mixed results for our control variables across the various models. In the settlement equation, parties are less likely to reach an agreement if they are either enduring rivals or if they experienced several stalemates in the previous five years. Specifically, when the disputants are enduring rivals and the dispute is marked by recent stalemates, leaders are 81% and 82% less likely to agree to a negotiated settlement, respectively. In contrast, leaders are more likely to reach a final agreement when they are both nondemocracies. Regarding the substantive impact, when both states are a nondemocratic, they are 43% more likely to reach an agreement. On the other hand, military imbalance, alliances, ethnic ties, and strategic territory all fail to reach standard levels of significance.

In the challenger terms of settlement equation, both domestic political opposition and ethnic ties to the disputed territory are associated with more favorable settlement terms, while military capabilities and other dispute involvement fail to reach standard levels of statistical significance.[24] Regarding the substantive impact, we find that when the leader of a challenger state has strong domestic opposition, she is 148% more likely to receive favorable terms. Similarly, the leader of a challenger state with ethnic ties to the disputed territory is about 166% more likely to receive favorable terms. In the target equation, strategic territory, capabilities, ethnic ties, and domestic political opposition all fail to reach statistical significance.

[24]We could not estimate the strategic territory variables in the challenger equation because there are only two observations in which the territory holds strategic value for the challenger but not the target. In both of these cases, the challenger does not receive favorable terms, leaving no variation on the dependent variable.

TABLE 5 The Impact of Changes in Variables on the Predicted Probability of Receiving Favorable Terms in a Final Settlement Agreement

	Predicted Probability of Favorable Terms	
	Challenger	**Target**
International Law		
Strong Legal Claims		
No	14.2%	24.2%
Yes	66.4%	62.5%
First Difference	55.2%	38.3%
95% Confidence Interval	(13.4%, 80.0%)	(12.9%, 60.2%)
% Change	389%	158%
Controls		
Ethnic Ties		
No	14.2%	
Yes	37.7%	
First Difference	23.6%	
95% Confidence Interval	(−2.4%, 54.8%)	
% Change	166%	
Political Opposition		
No	14.2%	
Yes	34.5%	
First Difference	20.4%	
95% Confidence Interval	(−5.2%, 53.8%)	
% Change	144.7%	

Note: To estimate the predicted probabilities, we move the covariate of interest from low to high while holding all the other covariates at mean or modal values. To compute the first difference, we subtract the baseline predicted probability (covariate at low values) from the predicted probability following the change in the covariate of interest. We then divide the discrete change by the baseline probability and then multiply that by 100 to get the percentage change.

Conclusion

The analyses presented in this article offer several important contributions to scholarship on international law. First and foremost, we examine two understudied events in international relations—the decision to reach and the outcome of negotiated settlements. Our empirical results suggest that international law has a powerful role to play in shaping leader behavior in negotiations by helping leaders solve the coordination and distribution problem inherent to disputes over territory. They also strongly support our assertion that international law should only have an effect on state behavior under certain conditions. When the relevant principles are clear and one state has asymmetric legal claims, the disputants are more likely to reach a final settlement agreement. If either of these conditions is absent, the probability of settlement is much lower. This conditional argument also received support when we examined the final terms of settlement. As our results clearly indicated, having a legal advantage was a strong predictor of securing favorable terms in a final settlement. Overall, then, our findings provide strong support for our argument on the role of international law in the settlement of territorial disputes; the effects of international law vary depending on the clarity of legal principles and asymmetrical legal merits to disputed territory.

Second, our results also highlight the considerable explanatory power international law has to offer, even in the presence of several controls. Variables that capture key aspects of security matters and domestic politics were inconsistent across our two models. Perhaps more surprisingly, the variable representing the military balance between the disputants was never significant in our models. This finding challenges the conventional wisdom that a superiority in military strength is a source of bargaining leverage at the negotiation table. Finally, the results presented here also illustrate the ability of international law to exert a meaningful influence without an enforcement mechanism. This speaks to the wider debate in the literature as to whether international law can be effective, even in the absence of third-party sanctions.

Our findings also suggest several avenues for future research. First, an important research question for future inquiry is whether states are more likely to comply with negotiated settlements and other dispute resolutions mechanisms, such as international adjudication or third-party mediation, that reflect the focal point suggested by international law compared to agreements brokered without regard for the states' legal claims. Second, it would be useful to consider how international legal principles affect how leaders behave in a militarized dispute or international crisis. For example, are leaders with strong legal claims more likely to escalate the crisis or end the dispute peacefully? A final point for future research might be to explore whether states view certain legal sources (e.g., CIL vs. treaty law or soft law vs. hard law) as being more likely to act as a focal point. While we aggregated several legal principles to determine an overall coding of the strength of a state's legal claim, it is possible that some sources carry more weight than others.

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Supporting Information

Additional Supporting Information may be found in the online version of this article:

- Coding of Explanatory Variables
- The Stages of a Territorial Dispute
- Heckman Results
  - **Table A:** Challenger Heckman Probit Results for the Decision to Reach a Negotiated Settlement and Receive Favorable Terms
  - **Table B:** Target Heckman Probit Results for the Decision to Reach a Negotiated Settlement and Receive Favorable Terms
  - **Table C:** Heckman Probit Results for the Decision to Pursue Talks and Reach a Negotiated Settlement
- Alternate Coding for Decision to Reach a Negotiated Settlement
  - **Table D:** Rare Events Logistic Regression Analysis of Decisions to Reach a Negotiated Settlement Agreement
  - **Table E:** Rare Events Logistic Regression Analysis of Decisions to Reach a Negotiated Settlement Agreement, Domestic Legal Systems and ICJ Optional Clause
- Key Legal Principles Relevant to Territorial Disputes and Coding Examples

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