# A ROAD MAP TO WAR

## *Territorial Dimensions of International Conflict*

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# See You in "Court"? The Appeal to Quasi-Judicial Legal Processes in the Settlement of Territorial Disputes

*Beth Simmons*

A central theme in much recent international relations scholarship is the growing role of supranational authority in the resolution of disputes among sovereign states. Across a wide range of issues, legally binding forms of third-party dispute settlement have become important in resolving interstate agreements. The evolution of the dispute-settlement procedures embodied in the General Agreement on Tariffs and Trade into the more formal and less discretionary structure of the World Trade Organization has streamlined the legal settlement of a growing volume of trade disputes involving a broad array of complainants and respondents. The 1996 inauguration of the International Maritime Court in Hamburg to handle disputes arising from the United Nations' Law of the Sea provides a forum in which questions of ocean management, fisheries, pollution control, sea bed mining, shipping lanes, and maritime territorial disputes may be resolved through legally binding processes (Clark 1996). Regionally, the European Court of Justice has acted, within limits but to an astonishing degree, to expand supranational authority over member states (Burley and Mattli 1993). There is even growing enthusiasm for the use of the once virtually moribund International Court of Justice (ICJ): during the cold war, the court decided only one contentious case a year, on average; in 1995, however, it had a record number of thirteen cases before it, and attention turned to the problem

of overload rather than underutilization (Boutros-Ghali 1995). Nor is the appeal to supranational authority limited to the arena of "low politics." Countries as diverse as Eritrea and Yemen, Qatar and Bahrain, and Malaysia and Indonesia have recently made a commitment or expressed an interest in territorial arbitration or adjudication.[1] Whether looking to the positive example of Chad and Libya's use of the ICJ to settle their territorial dispute or the disastrous example of Iraq's unilateralism regarding Kuwaiti territory, willingness to consider a legal commitment to review by a judicial or quasi-judicial body seems to be growing.

This chapter examines the role of international legal approaches to the settlement of territorial disputes. What are the conditions that make resort to negotiations inadequate for the settlement of a territorial dispute? Why do governments make legal commitments that bind their future behavior with respect to how a territorial agreement is to be resolved? That is, what conditions make a formal legal commitment to arbitrate a dispute an attractive alternative? And, finally, why do states sometimes actually go through with such commitments to submit to third-party review of their territorial claims?

Motivating this study is the question of the role that international quasi-judicial processes can play in the resolution of territorial disputes among states. Previous research suggests that international law may play an important role in reducing the incidence of territorial disputes. Paul Huth (1996), for example, has found that clear legal agreements reduce the probability that a dispute will arise in the first place. By his estimate, some 142 border agreements were concluded between 1816 and 1990, and 126 of these were still in force and honored by both states in 1995 (Huth 1996, 92; see also Kocs 1995). If supranational authoritative rulings contribute to such agreements, then there are good reasons to expect them to make a positive contribution to settling the dispute peacefully.

However, in much mainline theorizing in international relations, states are viewed as making commitments—especially formal, legal commitments—either cautiously or cynically and are overwhelmingly reluctant to delegate decision making to supranational bodies of any kind.[2] Dominant international relations paradigms have not to date provided clear hypotheses about why states choose to make legally binding agreements and why they sometimes go even farther



and choose to renounce their sovereign right to be the sole judge of what constitutes acceptable behavior.

In the first section of this chapter I review three strands of international relations theory and cull from them expectations regarding the role that international legal commitments play in resolving territorial disputes. Next I describe the scope of my empirical analysis and the methods I used to evaluate the data on territorial disputes in Latin America. Third, I present findings that link domestic political conditions with difficulties in resolving disputes, that link previous ratification difficulties with the commitment to third-party arbitration, and that suggest that a commitment to arbitrate significantly raises the probability of actually concluding the quasi-judicial procedure leading to a binding decision. In the final section I conclude that international law and institutions can be, and probably have been, used strategically by states with domestic political conditions that prevent resolution of potentially costly international disputes.

## INTERNATIONAL RELATIONS THEORY AND THE ROLE OF LAW IN SETTLING TERRITORIAL DISPUTES

The role of international legal processes has hardly been central to the study of international relations in general, and it certainly has been a minor avenue of inquiry with respect to such crucial national interests as territory. This is due in part to the dominance of realist thought that emphasizes power, rather than law, as the major influence on interstate disputes. Most realists—theoreticians and practitioners—tend to be highly skeptical that law influences state actions in any important way (Boyle 1980; Bork 1989–1990). Even though Hans Morgenthau (1985, 295) was ready to admit that "during the four hundred years of its existence international law ha[d] in most instances been scrupulously observed," he concluded that this could be attributed either to convergent interests or prevailing power relations. Governments, he thought, make legal commitments cynically and "are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests" (Morgenthau 1985).[3] As Stanley Hoffmann has written (1956, 364), the national state is "a legally sovereign unit in a tenuous net of breakable

obligations." Raymond Aron (1981) put it succinctly: "International law can merely ratify the fate of arms and the arbitration of force."

For realists, the essential flaw in international law is its decentralization. Because the decisions of third parties are highly unlikely to be enforced, states have little incentive to turn to quasi-judicial processes—and little reason to comply. Why an international dispute ought ever be referred to a third party is virtually inexplicable in realist terms; any controversies that are submitted to third-party rulings are likely to be those in which the stakes are very low. Thus, Aron and other realists were prepared to admit that "the domain of legalized interstate relations is increasingly large" but argued that "one does not judge international law by peaceful periods and secondary problems" (Aron 1981, 733). Furthermore, major powers are highly unlikely to use supranational legal processes, for they are typically well equipped to use other forms of unilateral persuasion (Bilder 1989, 478). Since territorial disputes have historically contributed to violent interstate conflict (Goertz and Diehl 1992; Vasquez 1993; Kocs 1995; Huth 1996) and continue to be one of the primary causes of the kinds of regional instability that has manifested itself in the post–cold war period (Kolodziej and Kanet 1996, 9–11), one might expect realist approaches to explaining their resolution to be highly persuasive.

A different set of expectations is suggested by a more functional approach to the study of international institutions. Most basically, functionalists view international agreements as a way to address a perceived need: international legal agreements are made because states want to solve common problems that they have difficulties solving any other way, for example, unilaterally or through political means alone (Bilder 1989, 492). Rational functionalists share realists' concern with the incentives states face to make or break international agreements, but rather than starting from the assumption that states cynically manipulate their legal environment, they engineer it in what are taken to be generally sincere efforts to address an otherwise suboptimal outcome. Both realism and rational functionalism are interest-driven approaches in which incentives play a crucial role.[4] The latter has, however, been far more willing to view the particular agreements and even the international legal system in toto as a collective good, from which states collectively can benefit, but to which none wants to contribute disproportionately and by which none wants



to consistently be disadvantaged. The focus of analysis in this approach has been on the perceived benefits of a system of rule-based behavior and on the individual incentives states face to contribute to, or detract from, such a system. Because they are often crucial to arriving at solutions, agreements are taken seriously. In the absence of severe, unresolved, collective-action problems or overwhelming incentives to defect that have not been addressed, obligations are therefore likely to be met.

Rational functionalism and traditional realism look on territorial settlements from somewhat different perspectives. Realists often model the dispute as one over resources—whether tangible or intangible—the division of which is viewed by states as zero-sum and crucial to their national interests—hence potentially worth a violent confrontation. Rational functionalism is more likely to view a territorial settlement as itself a valuable international institution. No doubt agreement on such an institution involves distributional issues, but it also involves joint gains that accrue to both parties. The expected size of these joint gains is an important variable to be weighed in the decision of how to settle the dispute. Jurisdictional certainty, for example, especially when accepted within a framework of a well-defined and mutually accepted rule of law, is something polities are likely to value very highly. In the absence of such institutions, states pay a high opportunity cost—lost trade, investment, social-development costs due to high military expenditures—which increase the anticipated value of settlement.

The starting point for functionalist explanations of international agreements relates to the incapacity of states to solve a problem without the institutional device. Like realists, most functionalist approaches to international politics begin with the premise that states delegate sovereignty begrudgingly. Certainly, there is a strong preference for resolving international controversies through political means, even unilaterally if necessary. However, functional theories recognize that, for a number of reasons, this may not be possible. Most functional theorizing has been systemic, focusing largely on international market failure and on problems of collective action (Keohane 1984). Relatively little attention has been given to the domestic political reasons why international cooperation may not be possible in the absence of an international institution, but increasingly researchers

recognize that domestic institutions can at times be a barrier to the realization of outcomes that might benefit society as a whole: preference outliers can capture domestic institutions and thus hold policies hostage to their demands; well-organized interests can exert particularistic influences on policy, decreasing overall welfare; decision makers can have time-inconsistent preferences that cause them to pursue short-term interests at the expense of longer-term gains; political polarization can lead to suboptimal outcomes or decisional paralysis at the domestic level. Clearly, in principle, the source of the suboptimality in functional theory can be domestic or systemic in nature.

International legal processes, to the extent that they are effective in this literature, may operate through a number of mechanisms that affect a government's willingness to comply. Unlike realist theory, however, centralized enforcement is rarely one of these mechanisms. Rather, the reason states make and then keep agreements is related to reputation: because states anticipate that they will pay a higher cost in the long run for breaking commitments, they are reluctant to do so (Schachter 1991, 7). To enhance the reputational consequences of noncompliant behavior, international agreements often provide mechanisms that increase transparency and therefore improve information regarding other states' behavior (Keohane 1984; Milgrom, North, and Weingast 1990; Mitchell 1994).

The rational functionalist literature suggests that international legal institutions potentially play a crucial role in the settlement of contentious interstate issues. One way they do this is by providing a clear focal point for acceptable behavior (Garrett and Weingast 1993). Some scholars point out that such focal points can actually gain a high degree of legitimacy both internationally and domestically (Franck 1990; Peck 1996, 237). This legitimacy, in turn, has important political consequences (Claude 1966, 367). For example, those who have examined bargaining in the context of legal-dispute settlement have argued that concessions tend to be easier to make, from a domestic political point of view, when they are legally required by an authoritative third party (Merrills 1969; Fischer 1982).[5] Overall, explicit international agreements make it more costly to renege on a commitment than would be the case in their absence. In this formulation, the search for a legitimate rule is a rational response to the need to find a stable solution to a problem or dispute that otherwise is difficult to resolve.



Another approach that has recently received some attention in the study of interstate disputes and more recently in legal circles may be termed "democratic legalism."[6] In this formulation, regime type is crucial to understanding the role of law in interstate relations (Slaughter 1995). Applied to the central questions of my analysis, this approach would hold that liberal democracies are more likely to comply with international legal obligations, and two lines of reasoning are advanced to sustain this argument. One suggests that because liberal democratic regimes share an affinity with prevalent international legal processes and institutions, they tend to be more willing to depend on the rule of law for their external affairs. The argument depends on the notion that norms regarding limited government, respect for judicial processes, and regard for constitutional constraints carry over into the realm of international politics. One way to think about this affinity argument is that governments in search of solutions to particular disputes are boundedly rational. As such they tend to search the domain of available mechanisms and processes not randomly but as conditioned by their domestic legal and constitutional experience. Thus, countries with independent judiciaries are more likely to trust and respect international judicial processes than are those that have no domestic experience with such institutions. Political leaders who are accustomed to respecting constitutional constraints on their power in a domestic context are more likely to accept principled legal limits on their international behavior.[7] These arguments dovetail nicely with a growing agenda in political science which argues that liberal democracies are more likely than are other regime types to revere law, promote compromise, and respect processes of adjudication (Doyle 1986; Raymond 1994; Dixon 1993).

A second, distinct mechanism has also been used to back expectations of the importance of democracy for legal approaches to dispute settlement. This rests on the observation that leaders in liberal democracies may be constrained by the influence that international legal obligations have on domestic groups, who are likely to cite such obligations in order to influence their own government's policy. In one version of this argument, the mechanism through which democratic constraints come into play is through domestic interest groups, which may have an interest in or preference for settling a dispute or abiding by a particular agreement (Young 1979; Schachter 1991, 7). In

another rendition, the effect of international law works through the separation of powers, most especially through an independent judiciary but also through the legislative branch (Forsythe 1990). The weight of an international obligation or authoritative legal forum may be crucial in convincing various domestic audiences to oppose a government's policy of continued disputation, especially in the face of a clear rule or authoritative decision (Fisher 1981, 134). There is an affinity between this line of argument and various strands of functional reasoning that view international institutions as crucial in influencing the domestic political debate surrounding a controversial foreign-policy choice. The distinctive contribution of democratic legalism is its expectation of systematic differences between liberal democracies and nondemocracies in this regard: domestic political constraints encouraging law-abiding behavior are assumed to be much stronger in the former than the latter. For these reasons, more democratic countries are expected to be more willing to turn to legal processes to settle disputes and to comply more readily with these decisions once they are made.

These theoretical orientations provide varying expectations with regard to key variables for understanding the desire that states may or may not have to go the quasi-judicial route to settlement of their territorial disputes. Realism expects large states, presumably in possession of a broad array of political resources, to pursue their interests, especially important national interests, through political rather than legal procedures. Rational functionalism would associate the use of legal approaches with expected benefits that cannot be achieved through political negotiations alone; the greater these perceived benefits and the more difficult they are to achieve through negotiations, the more incentives governments face to turn to legal institutions for their resolution. Finally, democratic legalism posits a greater willingness on the part of democratic regimes to submit their disputes to legal processes. The domestic commitment to the rule of law is expected to have implications for the willingness of governments to accept limitations on their international political behavior.

## SCOPE AND METHODS

In the remainder of this chapter I assess several hypotheses suggested by these three theoretical orientations regarding why states make



legally binding commitments and the conditions under which they turn to third parties to help settle their territorial disputes through quasi-judicial means. Arbitration and adjudication are both considered here as examples of such quasi-judicial procedures. Although important differences exist between the two legal procedures, these differences do not seem severe enough to exclude one at the expense of reducing the sample. Not surprisingly, arbitration is much preferred to adjudication, because the former allows specific ground rules to be spelled out in detail by the parties themselves, including the identity of the arbitrators and the boundaries of the issues to be decided, in a "compromis" prior to the procedures. Adjudication, on the other hand, invokes an existing legal framework and institution.[8] It is hardly surprising that states have more frequently chosen a form of third-party decision making over which they have more control. However, the result in each case is a legally binding ruling, carrying similar obligations with respect to subsequent behavior. Given my concern regarding the acceptance of authoritative supranational authority, combining these forms of legal ruling is justified.

The cases presented here are limited to Latin America (Central and South America).[9] This region provides an interesting opportunity to study legal processes with respect to territorial issues. Over the course of their independent histories (dating back in most cases at least to the 1830s), most, though by no means all, borders in this region have been contested, though to varying degrees, for widely varying periods and with differing propensities for the use of violence. Importantly for my project, the region provides a range of attempts to use legal solutions to address territorial issues. A number of multilateral agreements commit the Latin American countries to the peaceful resolution of their disputes, including territorial disputes, and these provide an opportunity to examine whether such agreements have figured significantly in actual territorial settlements. Third-party involvement has featured a range of personalities and organizations, from high representatives of the United States, to the Pope; from the Organization of American States to the United Nations, and from the short-lived Central American Court of Justice to today's ICJ. Indeed, one of the most interesting aspects of territorial-dispute resolution in this region is the unusual propensity of independent countries to submit to authoritative third-party legal rulings. With one small exception,[10] there has never been a legally constituted third- party ruling on a land border in

continental Europe, there have been two between independent countries in Africa, two in the Middle East, three in Asia, the Far East and the Pacific, and twenty in Latin America! In fact, one country, Honduras, has sought third-party legal rulings four times on all three of its international borders, twice turning to the ICJ (regarding the border with Nicaragua in 1960 and with El Salvador in 1992).

On the other hand, restricting cases to Latin America does introduce some limitations into the analysis. First, our measure of liberal democracy is more compressed than would be ideal given my interest in testing the relationship between liberal democratic regimes and the propensity to use legal solutions to territorial conflicts. Furthermore, the linguistic, religious, and, to a lesser extent, ethnic homogeneity of the region limit somewhat the ability to control for ethnic or cultural variables sometimes featured in other studies. Overall, however, this is one region in which there is a rich variance on many of the variables of substantive interest to this study, even though one should remain cautious about generalizing to other regions.

It is well known that the study of legal approaches to dispute resolution raises severe selection-bias issues that are not easily dealt with (Downs, Rocke, and Barsoom 1996). To try to ameliorate this problem, my analysis includes control cases involving no disputes as well as disputed borders; cases in which a third-party ruling was rendered in addition to cases in which one was not; and cases of compliance as well as cases of noncompliance (see Appendix 1 for the list of cases). The control cases were generated by including all cases of shared borders within the region regardless of whether adjacent territory was ever the subject of dispute. One reason for including the control cases is to test the possibility that cases in which the parties turned to legal procedures are not significantly different from the cases of no conflict. If ruled cases look a great deal like no-dispute cases, then it would be fair to maintain that third-party involvement is marginal in its effect; the door would then be open for skeptics to argue that the dispute likely would have been solved anyway.

In fact, territorial disputes do differ systematically from cases of shared borders that are never disputed: disputed cases tend to involve countries that are much more evenly matched by several measures of military capabilities than do cases of no dispute. A simple difference of means test indicates that the nondisputed control cases had much



higher ratios (more powerful: less powerful) for various measures of capabilities than did the disputed border cases.[11] Perhaps such asymmetries deter disputes, as smaller countries readily concede territory to larger ones. Thus, in examining only cases of disputes, we are likely to be dealing with cases that are more evenly matched in terms of military capabilities than would be a random sample of all borders. The differences are far less significant, however, between cases that were disputed but not ruled on and those in which authoritative rulings were made. In short, whenever we look at border disputes, we are probably excluding the most extreme cases of power differences between the countries involved. Because of the bias introduced by dealing with somewhat more evenly matched (disputing) cases, we should expect power asymmetry to have a much smaller impact on the decision to seek legal solutions to territorial disputes. This does not mean that power does not matter in the decision to employ legal approaches, for it has systematically shaped the pool of disputes under investigation.

For this reason, tests have been conducted on the entire set of cases (including controls), as well as on specified subsets. Results are reported only where these differ substantially. The results presented below were obtained using logistic regression analysis, with each border pair as a case.

## FINDINGS

Realist theory does not offer a good explanation for the decision by states to commit themselves to use authoritative third parties to render an arbitral award regarding territory. To the extent that some explanation must be found within the realist paradigm, however, third-party arbitration is likely to take place only over matters that do not involve a vital national interest. The more significant the matter at stake for a state's power, the less likely is the decision to be made to cede sovereign control over the right to self-judge. Functionalism, on the other hand, would suggest that states commit themselves to arbitration whenever what is perceived as a potentially valuable solution eludes a more unilateral or explicitly political approach. The use of quasi-judicial processes can be seen as a substitute for a state's ability to settle a dispute or solve a problem through negotiation. If the basic

functional logic holds, states with low political capacity tend to commit themselves to use third parties resolve the conflict. Finally, democratic legalism would predict that democratic regimes are more willing to submit to the rule of law and thus are more trusting of a neutral third party and quasi-judicial procedures at the international level.

Table 1 presents some evidence to consider in addressing these hypotheses (see Appendix 2 for definitions and for sources of the dependent and explanatory variables). The dependent variable is a dichotomous indicator of whether the country pair has agreed to a bilateral arbitration agreement regarding the particular territorial claim in question. Here I use "ratification failure"—the number of times a signed border treaty failed to be ratified in one or both of the signatory countries—as an indicator of lack of domestic political capacity for purposes of testing a domestically based functionalist argument. The functionalist argument suggests that where governments have been unable historically to secure domestic ratification on a desired agreement, they are more likely to commit the country to accept arbitration to legitimate an international settlement. I also include a measure of border length as an imperfect measure of the importance the two countries are likely to attach to any given border settlement. From a functional point of view, if settled borders are highly valued international institutions, a long shared border—such as that between Chile and Argentina, for example—is especially important for the establishment of jurisdictional certainty. In this case, a functionalist argument might suggest that the longer the border the greater the benefit of having a legal framework for its definitive settlement.

Whether the pair of countries concerned was more or less democratic was used to test democratic legalism, with the expectation that democratic pairs would be more likely to commit themselves to have the dispute arbitrated. "Past violence" and "resources"[12] are used indicators of the importance the countries attach to the territory for purposes of testing the realist hypothesis. The idea behind the former indicator is that where countries have been willing to use violence to press their claims, one can infer that the claim itself is likely to be of greater national significance than in cases where violence has never been used. As a result, realists might expect a negative correlation between the past use of force and the willingness to agree to arbitration. Alternatively, a positive correlation could be interpreted to suggest



that unsuccessful settlement through the use of violence increases the attractiveness of legal solutions as a last resort.[13] I also include the ratio of military personnel as a test of the argument that the more powerful nations do not commit themselves to arbitration, as most realist theorists would anticipate.

The clearest finding is that a history of ratification failures is associated with a higher probability that governments agree to treaties that commit the state to arbitration. Where a history of ratification failure is present, the likelihood of an arbitration treaty increases. According to Model 1, which focuses on disputed cases only,[14] ratification failure increased the predicted probability of a commitment to arbitrate by nearly 57 percent when border length was constrained to be short and all other variables were held at their means. These results suggest that unsuccessful efforts to solve the problem diplomatically are associated with a commitment to let a third party arbitrate

*Table 7.1*
**Commitment to Arbitrate**

Dependent variable: Presence of a bilateral arbitration treaty
Results of logistic regression analysis[a]
Coefficients (standard errors)

| | Model 1 Disputed Cases: | Model 2 Disputed Cases: |
|---|---|---|
| Constant | -0.472 (1.534) | 2.589 (4.681) |
| Ratification failure | 2.881[c] (1.482) | 3.603[b] (2.204) |
| Democratic pair | -- | 0.433 (2.468) |
| Past violence | -- | -0.858 (1.545) |
| Resources | -- | -0.538 (1.544) |
| Ratio of military personnel | -0.082 (0.106) | -0.158 (0.236) |
| Border length | 10.359 (52.981) | 11.778 (80.96) |
| # of observations | 32 | 30 |
| Chi squared | 16.57[d] | 15.87[d] |
| -2 log-likelihood | 17.05 | 11.17 |
| % of cases correctly predicted | 90.6 | 93.3 |

[a] All significance levels based on one-tailed tests.
[b] $p < 0.10$; [c] $p < 0.05$; [d] $p < 0.01$

or adjudicate the border between states. This supports a functionalist argument that the inability to reach a mutual agreement that both domestic publics can accept is a reason to commit to arbitration.

There was virtually no support for the realist hypotheses or for democratic legalism in the analysis (Model 2). In this sample, the presence of a democratic pair did not significantly affect the probability of making an arbitration commitment, though the sample range is quite truncated due the region and time period. Surprisingly, there was no support for the realist hypothesis, that only in "unimportant" cases do states agree to arbitrate. We would have expected a strong negative effect for past violence and resources were this true. Neither past violence—presumably a subjective indicator of how important the territory is for the countries in question—nor extent of natural resources in the region—a somewhat more objective indicator of the intrinsic significance of the territory—increased the probability that border pairs would make an arbitration commitment. There is no evidence that high stakes strip states' desire to commit to arbitration.

It is possible, however, that ratification failure is endogenous to regime type, thus masking the effects of democratic regimes. It could be the case that ratification difficulties are associated with democracy—a statistical collinearity problem—which then indirectly accounts for the arbitration commitment. This does not appear to be the case. Table 2 suggests that, whether analyzing all cases or disputed cases only, if anything, the more democratic countries were associated with a lower probability of ratification failures. Although this seems counterintuitive at first, this relationship is not difficult to understand. After all, representatives of democratic states are expected to be sophisticated negotiators: they will only negotiate in the range of agreements that they know can be accepted by their domestic constituency. Nondemocratic representatives, on the other hand, face weaker peremptory constraints. They may take actions that are out of touch or even illegitimate by whatever body is involved in the ratification process. One interpretation of the finding that less democratic countries are associated with more ratification failures could be that they lack legitimacy in their international negotiations, once again supporting the notion that functionalist reasons exist for entering into arbitration agreements, especially for less democratic states.



Two other interesting results appear in Table 2. The first is that border length had a significant impact on the probability of ratification failure: countries sharing short borders were about 59 percent more likely to experience ratification failure than were those with long borders, according to Model 2. Furthermore, the greater the asymmetry in military capabilities, the less likely was ratification failure, most obviously in Model 1, in which these asymmetries are much greater. (The effects of such asymmetries are diluted when looking at disputed cases only.) Once again, there is evidence that the more evenly matched the countries, the more common were domestic ratification difficulties, which in turn was associated with the tendency to commit to arbitration. Weaker states may have little choice but to ratify agreements in the face of a stronger opponent, while stronger states have probably designed these agreements to suit their own interests. Both of these effects would explain why power asymmetries improve the probability of ratification.[15]

*Table 7.2:*
**Ratification Failure**

Dependent variable: Whether a boundary treaty has failed to be ratified in one or both countries
Results of logistic regression analysis[a]
Coefficients (standard errors)

| | Model 1 All Cases: | Model 2: Disputed Cases: |
|---|---|---|
| Constant | 2.295[b] (1.356) | 3.761 (2.382) |
| Democracy country 1 | 0.529 (0.449) | 0.281 (0.551) |
| Democracy country 2 | -.837[c] (0.426) | -.782[b] (0.471) |
| Border length | -1.869[c] (0.943) | -3.028[c] (.1.218) |
| Ratio of military personnel | -0.178[c] (0.098) | -0.250 (0.163) |
| # of observations | 37 | 33 |
| Chi squared | 18.90[d] | 20.14[d] |
| -2 Log-likelihood | 31.71 | 24.11 |
| % of cases correctly predicted | 81.1 | 87.9 |

[a] All significance levels based on one-tailed tests.
[b] $p < 0.10$; [c] $p < 0.05$; [d] $p < 0.01$

Overall, the evidence seems to suggest that the major influence on the probability of making an arbitration commitment is the inability to secure domestic ratification. Interestingly, the evidence is somewhat stronger that nondemocratic regimes are more likely to run into ratification difficulties than are democracies, which quite possibly are more likely to be able to anticipate the feasible set of border solutions that will garner support at home. In the background conditioning all these effects is the influence of power symmetry, which contributed to the willingness to commit to arbitration and contributes to domestic ratification failure. More equal states in search of a border solution would therefore seem most likely to break their political-military impasse by reaching for legal solutions to an otherwise intractable and potentially costly border dispute.

What is the significance of an arbitration treaty? Does it really represent a commitment to arbitrate? Realists do not spend their time coding the existence of arbitration treaties, because their approach to international politics would predict very little explanatory value added by looking at such commitments as distinct from interests. Such promises may be made for tactical reasons that have little to do with the genuine desire to fulfill the promise. Certainly, powerful states are not likely to go through legal channels to resolve their border disputes. Functionalist logic suggests that the expected benefits explain the agreement; there is therefore every reason to believe that, in the absence of a severe collective-action problem or drastically changed circumstances, that *pacta sunt servanda.* Like the utilitarian explanation for keeping one's promises, functionalist explanations provide clear reasons for treaties to be observed. Democratic legalism, on the other hand, probably would not deny that such treaties are a good predictor of the actual decision to arbitrate but would tend to emphasize that democracies are more likely than nondemocracies to agree to go through with arbitration.

Table 3 presents some evidence that may help sort out these contending claims. The dependent variable here is whether the border or any portion of it had actually been the subject of an international arbitral or adjudicative ruling. The clearest relationship seems once again to support a functionalist approach: the existence of bilateral arbitration treaties is a good predictor of the completion of the arbitration process—that is, that there will actually be a ruling. States commit themselves to a process for settlement; their behavior reflects this



commitment. In fact, holding all other variables at their mean and varying the value of an ad hoc arbitration agreement from none to one increased the probability of completing a arbitration procedure from 41 percent to 72 percent where the democratic pair was 0 and from 16 percent to 41 percent where the democratic pair was 1 (Model 3).

Some very interesting patterns emerge with respect to the kinds of commitments that lead to an actual arbitration. In the first place, general multilateral treaties were inversely associated with achieving a ruling. When all other variables are held constant at their means,

*Table 7.3:*
**The Decision to Arbitrate**

Dependent variable: Whether a third-party ruling has been made in each case
Results of logistic regression analysis
Coefficients (standard errors)

| | Model 1 All Cases: | Model 2: Disputed Cases: | Model 3: Disputed Cases: |
|---|---|---|---|
| Constant | -1.403[b] (0.593) | -0.536 (0.774) | -0.075 (0.749) |
| Ad hoc Arbitration treaty | 1.650[c] (0.694) | 1.442[c] (0.651) | 1.334[c] (0.636) |
| Territorial/bilateral treaty | 0.499 (0.319) | 0.414 (0.327) | 0.339 (0.315) |
| General multilateral treaty | -1.661[c] (0.801) | -1.700[c] (0.800) | -1.768[c] (0.770) |
| Ratio of military personnel | -- | -0.015 (0.040) | -- |
| Democratic pair | -- | -- | -1.282 (1.084) |
| # of observations | 43 | 38 | 36 |
| Chi squared | 18.61[d] | 13.87[d] | 13.65[d] |
| -2 log-likelihood | 40.98 | 38.38 | 35.2 |
| % of cases correctly predicted | 79.1 | 68.4 | 72.2 |

[a] All significance levels based on one-tailed tests.
[b] $p < 0.10$; [c] $p < 0.05$; [d] $p < 0.01$

having signed a general multilateral agreement to arbitrate any matter with any other signatory reduced the actual probability of doing so from 81 percent to 43 percent where the democratic pair was 0 and from 55 percent to 17 percent where the democratic pair was 1. This suggests that general commitments may be of limited usefulness for solving specific problems. Invoking the functional mechanism for compliance, the breaking of more general commitments may carry fewer negative reputational consequences than the breaking of more specific commitments. Or perhaps it is easier to make clever legal arguments as to why the general commitment does not cover the specific case, providing a technical excuse for its nonexecution. In fact, there may be some tendency for "sincere" states to make specific commitments, while more "cynical" states may be more likely to sign grand pronouncements to which they have no intention of being held: there was a moderate negative correlation (–.38) between the signing of an ad hoc arbitration commitment and a general multilateral arbitration treaty. In any event, grand pronouncements to take any dispute involving any signatory that cannot be solved through negotiation to a third party for arbitration was associated with a diminished probability of actually doing so.

On the other hand, bilateral and especially ad hoc agreements to arbitrate showed a strong positive correlation with actually reaching a ruling. The more specific the commitment, the more likely it was to be carried out. Certainly this is partially due to the fact that commitments are endogenous to political considerations: states that are serious about settling disputes draw up more explicit commitments to do so.[16] Here I have distinguished two levels of specificity with respect to bilateral commitments: where agreements were drawn up to arbitrate a specific dispute—ad hoc arbitration agreements—the effects were consistently strong and positive. Note, however, that it is not automatic: for example, a 1904 boundary-arbitration convention coded as "ad hoc" naming the emperor of Germany or Mexico as arbitrator was agreed between Colombia and Ecuador but was never carried out.) In the presence of general bilateral treaties, or boundary treaties with specific arbitration provisions to address dispute settlement should a dispute arise, an actual ruling is likely, though the relationship is not as strong as with ad hoc agreements.

Contrary to the expectation of democratic legalism, the degree of democracy did not have much impact. Regime type (whether the pair



of countries involved is relatively democratic) is not associated with arbitration using these data (Model 3). Furthermore, none of the realist hypotheses had any explanatory power: asymmetrical power did not contribute to whether a case would be arbitrated (Model 2); nor did past violence or extent of natural resources (not reported here).

What this analysis does not tell us, of course, is exactly why states in some cases committed themselves to arbitration but have failed to follow through. Governments may resist following through with arbitral commitments for a number of reasons. One may be that the commitment was made cynically, in order to gain some other political or diplomatic advantage without serious consideration given to following through. A less sinister reason may be that committing to the prospect of international arbitration caused the parties to redouble efforts to settle diplomatically, in which case the dispute may have been resolved, or "settled out of court," without the rendering of a ruling. A third possibility is rather more technical: the parties may not have been able to agree on the parameters of the question to be decided by the arbitrator, the entity named in the agreement may have refused to perform the task, or there may be disagreement over whether conditions actually trigger applicability of the agreement at all. For a number of reasons, one can hardly expect a perfect correlation between a prior commitment to arbitrate and the rendering of an actual ruling. Nevertheless, the patterns that do emerge support the power of specific agreements to shape outcomes much more convincingly than do more traditional realist expectations or regime characteristics.

Still, there are a number of reasons for caution in drawing sweeping conclusion from this analysis. The number of cases is relatively small. The analysis has been limited to Latin America, which imposes certain limitations on their generalizability. In particular, so few cases of liberal democracy—by present-day European standards—are to be found in this sample that a fair test of democratic legalism may not be possible. The relative linguistic, religious, and ethnic homogeneity of the region—variables that are certain to influence the course of such disputes in the former Soviet Union, for example—does not permit serious testing of these kinds of variables in influencing territorial disputes. Despite a number of acknowledged limitations, my findings carry some important implications for thinking about the role of international legal processes in the settlement of territorial disputes. The picture that emerges suggests that more evenly matched, less

democratic governments find it difficult to negotiate international boundary agreements that can be accepted at home. This kind of domestic political incapacity—reflected here as ratification failures—is associated with the negotiation of arbitration treaties, which, with the exception of general multilateral commitments, are a good predictor that the case will in fact go to court. States—especially nondemocratic ones that suffer from an incapacity to reach and ratify their own bilateral agreements—are likely to make and fulfill commitments to use arbitration to settle their boundary disputes.

## DISCUSSION AND CONCLUSIONS

The primary message of this chapter has been that although governments have a broad range of nonviolent options for settling their territorial disputes, judicial or arbitral settings are especially useful for those governments wishing to settle disagreements but needing an international institution that raises the stakes to settle—possibly through reputational effects, as functional theory suggests—and lends legitimacy to a particular territorial arrangement. One of the most interesting findings is that governments—not necessarily the most democratic ones—that seem unable to secure domestic ratification of international territorial agreements choose to commit themselves to specific forms of dispute settlement in the future: specific agreements to submit the dispute to a legally constituted third party with the authority to make a binding legal decision about the appropriate border arrangement. Furthermore, the evidence suggests that making such an arbitration commitment greatly increases the probability that the governments in question will in fact go through with the process and that a ruling will be rendered.

The picture supports functional arguments most readily: where extreme power asymmetries have not deterred a dispute in the first place, states are willing to commit to processes of third-party review—to agree to submit to supranational legal authority—because they wish to solve disputes that have eluded unilateral or bilateral political resolution (Bilder 1989, 492). The reason appears to be closely tied to the inability to negotiate an international agreement that can be ratified at home. Ironically, the less democratic governments—perhaps less attuned to the nature of probable domestic opposition to the



content of their international negotiations—seem to face ratification problems more often than do more democratic regimes. Once a bilateral arbitration commitment is made, this was the strongest correlate for actually obtaining a ruling—evidence that the commitment is meaningful for action.

These findings have broader implications for the way in which we think about borders and territorial disputes in general. In much of the conflict-resolution literature, the prevailing assumption has been that territorial conflicts can be analyzed exclusively in terms of distributional issues. Often, empirical models has analyzed the divisibility resources (tangible or intangible), for example, as a major contributor to territorial conflict and difficulties in settlement. But this research has underlined another aspect of territorial settlement: agreed-on international borders are valuable international institutions that provide certainty, reduce the need for high military expenditures, encourage welfare-improving investment and trade, and reduce opportunity costs that cut into social development in the affected regions. There are good reasons to make such institutions explicit and legal, for when this happens, research indicates, violence subsides (Huth 1996), and opportunities for mutually beneficial economic and diplomatic interaction open up. Nonetheless, the functional literature suggests that there are a number of reasons why valuable international institutions are difficult to arrange through bilateral political means alone. In this chapter I have focused on domestic incapacities, which further research may reveal to be associated with nationalistic preference outliers that have been able to capture the ratification process in some political systems. It suggests not only that more attention be paid to domestic political conditions but also that more weight be given to an interpretation of borders that views them as mutually beneficial institutions rather than as strictly zero-sum distributional conflicts.

The importance of legal approaches to the settlement of territorial conflicts, in this conception, lies in the role that binding legal decisions are expected to play in influencing domestic political forces to accept a particular legally binding ruling. To commit to arbitrate is to stake the government's, and by extension, the country's, reputation on following through. Though not explored here, reputational consequences may be even greater in the decision about whether to comply with such a decision. This is because "Once a court has resolved

a dispute and decided what ought to happen, the compliance objective of the community is clear: it wants its members to comply with that decision" (Fisher 1981, 25). In fact, in about half the cases of a formal third-party ruling covered in this analysis, both sides agreed formally to comply with the ruling. Similarly Hensel and Turres' work (1997) suggests that arbitration and adjudication rank near or at the top in terms of effectively reducing violence and ending the dispute once and for all. It may be the most appropriate settlement means available for government leaders who see tremendous mutual and national benefits to settlement, whose relative power capabilities make military settlement unlikely, and who face domestic constraints to settlement through straightforward political negotiation. For while it may be true that only governments that are willing to make concessions are likely to submit to such legal processes (Coplin 1968), it is not at all obvious that such concessions would be possible in their absence. As such, authoritative third-party rulings have historically been, and remain, a useful tool in overcoming domestic objectors and securing settlement once and for all.

## APPENDIX 1
## List of Cases

Cases of no dispute:

| |
|---|
| Argentina/Uruguay |
| Belize/Mexico |
| Brazil/Venezuela |
| Brazil/Guyana |
| El Salvador/Guatemala |

Disputed cases, no use of authoritative third party:

| | |
|---|---|
| Argentina/ Bolivia | 1872–1925 |
| Argentina/Great Britain | 1820–1995 |
| Bolivia/Brazil | 1837–1925 |
| Bolivia/Chile | 1858–1995 |
| Bolivia/Paraguay | 1825–1938 |
| Brazil/Paraguay | 1860s–1932 |
| Brazil/Peru | 1821–1913 |
| Brazil/Uruguay | 1825–1995 |
| Colombia/Panama | 1903–1924 |
| Guyana/Suriname | 1975–1995 |



Disputed cases in which third party ruling is suggested or initiated, but not concluded:

| | |
|---|---|
| Belize/Guatemala | 1939–present |
| Brazil/Colombia | 1826–1937 |
| Colombia/Ecuador | 1830–1916 |
| Colombia/Nicaragua | 1890–present |
| Colombia/Peru | 1822–1933 |
| Dominican Rep/Haiti | 1844–1936 |
| Guatemala/Mexico | 1840–1895 |

Cases of third-party ruling, no compliance:

| Case | Dates (Ruling Date) | By | Rejecter | Comments |
|---|---|---|---|---|
| Argentina/Chile | 1847–1984 (1977) | United Kingdom | Argentina | Region: Beagle Channel; settled in 1984 |
| Argentina/Chile | 1847–1994 (1977) | United Kingdom | Chile | Awards were made in four sectors; two of them were rejected |
| Bolivia/Peru | 1825–1911 (1909) | Argentina | Bolivia | Dispute was resolved by Peru's concession |
| Chile/Peru | 1881–1929 (1924) | United States | Peru | Subject of arbitration: whether to hold a plebiscite |
| Costa Rica / Nicaragua | 1842–1900s (1888) | United States | Nicaragua | |
| Costa Rica / Nicaragua | 1842–1900s (1916) | Central American Court of Justice | Nicaragua | Subject of arbitration: validity of an earlier (1888) ruling |
| Costa Rica / Panama | 1903–1944 (1900) | France | Costa Rica | Prior to Panama's independence, a dispute between Costa Rica Colombia |
| Costa Rica / Panama | 1903–1944 (1914) | United States | Panama | |
| Ecuador/Peru | 1842–present | Brazil | Ecuador | Ecuador initially accepted, then rejected the ruling in 1960 |
| Guyana/Venezuela | 1951–present | United States | Venezuela | Venezuela rejected an earlier arbitration with the UK |
| Honduras/Nicaragua | 1858–1960 (1906) | Spain | Nicaragua | Nicaragua claimed the ruling "null and void" |

Cases of third-party ruling, compliance:

| Case | Dates (Ruling Date) | By | "Loser" | Comments |
|---|---|---|---|---|
| Argentina/Brazil | 1858–1898 (1895) | United States | Argentina | |
| Argentina/Chile | 1872–1903 (1899) | United States | Not clear | Region: Los Andes |
| Argentina/Chile | 1847–1966 (1966) | United Kingdom | Chile | Region: Palena sector; 70% awarded to Argentina |
| Argentina/Chile | 1847–1994 (1994) | Regional | Chile | Region: Laguna del Desierto |
| Argentina/Paraguay | 1840–1939 (1878) | United States | Argentina | |
| Colombia/Venezuela | 1838–1932 (1891) | Spain | Venezuela | Venezuela delayed compliance for some 25 years |
| El Salvador / Honduras | 1861–1992 (1992) | ICJ | El Salvador | 80% of disputed territory awarded to Honduras |
| Guatemala/ Honduras | 1842–1933 (1933) | Costa Rica / Guatemala / United States | Not clear | |
| Guyana (British Guiana) / Venezuela | 1880–1899 (1899) | United States | Venezuela | Ruling gave 34,000 square miles to the United Kingdom; 8,000 square miles to Venezuela |
| Honduras/Nicaragua | 1858–1960 (1960) | ICJ | Nicaragua | |

# APPENDIX 2
## Data: Definitions and Sources

### Dependent Variables

*Ratification Failure:* The number of treaties regarding specification of the border that have failed to be ratified in one or both countries (range 0 to 5, with twenty cases coded 0; eleven, 1; five, 2; four, 3; one, 4; and two, 5). The data were then recorded dichotomously: 0 = 0; 1–5 = 1. *Sources:* Ireland (1938, 1941); Allcock et al. (1992).



*Arbitration Treaty:* The presence (1) or absence (0) of one or more bilateral treaties that have provided for the arbitration of a specific border or border region. This includes ad hoc arbitration treaties and provisions within specific border treaties which indicate that differences arising from the treaty should be referred to third-party arbitration. Fourteen cases were coded 0; twenty-seven, 1. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995).

*Arbitration:* Whether the boundary or any portion thereof (1) has been, or (2) has not been the subject of international arbitration (seventeen cases) or adjudication (three cases). Twenty cases were coded 1; twenty-five, 0. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995). One ambiguous case is that of the 1910 arbitration in process by the king of Spain between Ecuador and Peru, which I have not coded as a completed ruling, because Ecuador's imminent rejection of the ruling caused the king to withdraw as arbitrator without issuing his decision (Krieg 1986, 37–44). Had the ruling been made, the result would certainly have been noncompliance.

### Additional Domain Variable

*Dispute:* Whether (1) or not (0) the border between states has disputed by one or both states. To qualify as a disputed border, there had to be evidence of disagreement over the location of the boundary as articulated by the central or national government. Out of forty-four cases, thirty-nine were coded as disputed at some point; in five cases—Argentina/Uruguay, Belize/Mexico, Brazil/Venezuela, Brazil/Guyana, and El Salvador/Guatemala—I found no evidence of any territorial dispute. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995).

### Explanatory Variables

*Military Personnel:* The ratio of total military personnel in the larger country compared with that in the smaller country, averaged for the duration of the dispute. Original data were expressed in thousands. *Source:* COW National Material Capabilities dataset.

*Democracy Country 1:* The average democracy score for the first country in the pair, calculated from the POLITY III dataset, for the

period covered by the duration of the dispute. *Source:* POLITY III dataset. For a complete discussion of the conceptualization and coverage of this dataset and comparisons with other democracy measures, see Jaggers and Gurr (1995).

*Democracy Country 2:* The average democracy score for the second country in the pair, calculated from the POLITY III dataset, for the period covered by the duration of the dispute. *Source:* POLITY III dataset.

*Democratic Pair:* Whether (1) or not (0) both countries in a given pair were relatively democratic during the dispute. The cutoff to qualify as a democracy was placed at the sample mean (2.6). Even with this very low threshold for democracy, only eight pairs were considered to both be rather more democratic. *Source:* POLITY III dataset.

*Violence:* A three-level rating of the degree of violence relating specifically to territorial and border issues between the two countries. Cases were coded 1 if there was virtually no mention of border or border-related violence between the two countries—for example, Colombia and Venezuela. Cases were coded 2 if there were skirmishes, clashes, or isolated incidents between police, armed forces, or local inhabitants, and also if there was a substantial show of force at any point during the episode—for example, the shows of force by Argentina and Chile in 1895, 1978, and 1982 regarding the Beagle Channel and lower Patagonia. Cases were coded 3 if there was substantial military conflict up to and including full fledged-war—for example, the War of the Pacific, 1879–1881, between Chile and Peru for control over territory. *Sources:* Ireland (1938, 1941); Allcock et al. (1992).

*Resources:* A three-level rating of the importance of natural resources for the territory under dispute. Cases were coded 1 if the issue of resources and their control was apparently absent from the dispute—for example, if the issue of resources was never mentioned, as in the case of Argentina and Brazil, or if the territory is unusable jungle or dessert). Cases were coded 2 if the territory was of moderate value—examples include agricultural land, like the "plains of the Atlantic River valley in the case of Honduras and Nicaragua; water rights, as in



the case of Argentina and Paraguay; or control of fishing resources, as in the case of Argentina and Chile with respect to the Beagle Channel). Cases were coded 3 if they involved significant mineral or oil deposits or significant commercial assets, such as ports or control of a canal—Chile and Peru, for example, disputed control over Pacific ports as well as territory containing significant nitrate deposits). Nineteen cases were coded 1; eighteen, 2; and seven, 3. *Sources:* Ireland (1938, 1941); Allcock et al. (1992).

*Multilateral General Arbitration Treaty:* The number of multilateral, general arbitration treaties that both parties have ratified. Treaties had to have been in effect during the period in which the territory was under dispute; they were excluded if countries ratified the treaty after a dispute had been arbitrated or otherwise settled. For the null cases, treaties simply had to be in effect at some point during the first one hundred years of independence. Where one treaty appears to be a successor for another—as in the case of the Treaty of Peace and Amity, signed at the Central American Peace Conference in 1907, in effect between 1907 and 1918, which appears to have been succeeded by the 1923 convention for the establishment of an International Central American Tribunal, in effect between 1923 and 1934—these were coded as one treaty. Treaties that simply called for commissions of inquiry—for example, the 1923 Gondra Treaty, negotiated at the Fifth International Conference of American States—or for the peaceful settlement of disputes—like the 1933 South American Anti- War Pact—were excluded. Twenty-four country pairs were coded 0; eleven, 1; and three, 2. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995).

*Territorial and Bilateral General Arbitration Treaty:* The number of treaties that have committed states to arbitrate territorial disputes. Included are general obligations to arbitrate disputes arising from a specific territorial agreement or to a bilateral general agreement to arbitrate disputes. Treaties had to have been in effect during the period in which the territory was under dispute; they were excluded if countries ratified the treaty after a dispute had been arbitrated or otherwise settled. Twenty-seven cases were coded 0; eleven, 1; four, 2; none, 3; and one, 5. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995).

*Ad Hoc Arbitration Treaties:* The number of specific agreements, ratified by both parties, to arbitrate a particular territorial dispute. To count as an ad hoc arbitration treaty, the main purpose of the agreement had to be to commit to the arbitration of a specific territorial dispute. Though these have usually been proximate in time to the actual carrying out of a ruling, they do not automatically imply a ruling will be made. Where one ad hoc arbitration agreement was obviously designed to succeed another, the agreements were coded as one treaty. For example, in 1971 Chile and Argentina signed an agreement that Great Britain should arbitrate the Beagle Channel dispute; and in 1972 another agreement was signed transferring authority from the United Kingdom to adjudication by the ICJ; these were coded as one ad hoc commitment. Twenty-one cases were coded 0; seventeen, 1; four, 3; and one, 4. *Sources:* Ireland (1938, 1941); Allcock et al. (1992); Biger (1995).

## NOTES

1. On the growing tendency for non-Western countries to turn to judicial forms of dispute settlement, specifically with reference to the ICJ, see McWhinney (1991).

2. In fact, of course, the willingness of states to submit crucial policy decisions to authoritative supranational scrutiny is not a new phenomenon. The use of arbitration panels to judge such important issues as the maintenance of neutrality during wartime, various questions of state responsibility, and even territorial sovereignty burgeoned around the turn of the last century (Simpson and Fox 1959). For a listing of more than 175 cases and rulings by arbitral panels or international courts, see Bernhardt, 1981. But see Jenks (1964, 101), who argues that since World War II remarkable advances have been made in virtually every sector of international organization except the judicial sector.

3. See also Aron (1981, 110): "juridical interpretation, even when it is concretely improbable . . . is utilized as a means of diplomatic pressure." See also the general discussion in Goertz and Diehl (1994).

4. There are important differences between and within these approaches regarding the role of sanctions versus the use of incentives to manage the process of compliance. Chayes and Chayes (1995) emphasize that international law essentially has an important persuasive function and that, to enhance compliance, scholars and practitioners should move away from an enforcement model that focuses on sanctions and punishments to a management model that emphasizes positive incentives and negotiation to achieve compliance. Critics respond that such a managerial approach to compliance will only go so far; that deep cooperation—agreements that proscribe behavior that is truly difficult to forswear or prescribe behavior that is costly in the short term—will require some form of enforcement (Downs, Rocke, and Barsoom 1996). The distinction between the enforcement and management approaches is often made in the context of domestic law enforcement (Hawkins and Thomas 1984; Snavely 1990).



5. An anecdote that underscores this argument was the 1903 proposal by the Peruvian Foreign Minister to the Ecuadoran minister in Lima that the two sides secretly agree on a boundary line, which would then be conveyed the arbitrator who would then issue it as his own. "This plan would, it was thought, ease the pressure of public opinion on both governments since they would be obligated to accept the arbiter's decision" (Krieg 1986, 37). Though this agreement ultimately fell apart due to misunderstanding over the verbally agreed-on boundary line, it does underscore the value arbitrators were viewed as having as binding government constraints to deflect domestic opposition.

6. This is not a term used by proponents of this approach, but it is a convenient appellation for the purposes of this article.

7. "International law is not unlike constitutional law in that it imposes legal obligations upon a government that in theory the government is not free to ignore or change" (Fisher 1981, 30). Constitutional constraints most often rest on their shared normative acceptance, rather than on the certainty of their physical enforcement, providing another parallel to the international setting.

8. The distinction has been eroded by the use of chambers in the ICJ, however: three out of four of the cases in the late 1980s that used chambers were territorial disputes, indicative of how sensitive states about submitting this kind of issue to standing courts (Rosenne 1989, 236).

9. My list of disputed territorial claims differs from that of Paul Hensel and John Turres (1997) in a number of respects. First, with the exception of the Falklands Islands, I did not include disputes over islands: my dataset concentrates on mainland territorial disputes. Second, I did not include cases that involved imperial powers: my dataset concentrates on cases involving two independent countries. On this basis, thirteen cases are included in their dataset that are excluded from mine. (Note that many of the cases involving imperial powers also involve islands.) I have also included Central American cases (fifteen), which Hensel and Turres do not. Furthermore, Hensel and

Turres analyze country years. The disputed case is the unit of analysis in this study.

10. In 1957 Belgium and the Netherlands agreed to submit to the ICJ the question as to which of the two states had sovereignty over two plots of land totaling thirty-four acres. In its judgment of June 1959, the court voted 10 to 4 in favor of Belgium. There have also been several island arbitrations or adjudications: the case of Eastern Greenland (Denmark and Norway), ruled on by the Permanent Court for International Justice in 1933, involving the most significant amount of territory; and the Minquiers and Ecrebos Case (France and the United Kingdom), involving small islands, resolved by the ICJ in 1953.

11. For example, the ratio of military personnel in the larger of the two countries was nearly fifty times greater than that in the smaller country for cases in which disputes never arose, while this ratio was significantly smaller ($p < .001$)—six times—for cases in which borders were actually disputed. Similar differences in the ratio of total population and military expenditures held, as well.

12. The resource variable, in keeping with a fairly narrow interpretation of realist theory, includes only tangible resources that could conceivably contribute to the power base of the state (see Appendix 2). Although contributors to this volume have attempted to measure the intangible value of the territory, tangible resources are both better suited to my theoretical concern and less susceptible to subjective interpretation on the part of the analyst. I have therefore chosen to limit my analysis to tangible resources.

13. Thanks to Paul Diehl for suggesting this possible interpretation.

14. Results were substantially the same whether all cases or only disputed cases were analyzed.

15. Resources and past violence were also tested and found to have no impact on ratification failure (not reported here).

16. Though the results are not reported in these tables, the evidence suggests that states with a high ratification failure rate do not choose general, multilateral treaties; they are more closely associated with specific, ad hoc agreements to arbitrate.

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