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# Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes

**Krista E. Wiegand[1] and Emilia Justyna Powell[2]**

## Abstract

Does a state's past win/loss record affect its subsequent choices of peaceful dispute resolution methods in territorial disputes? We present a theory that portrays attempts at peaceful resolution as a strategic process, by which states search for the most favorable forum. During the process of decision making, a state strategically chooses between several methods of peaceful resolution; its final choice is based on the state's past experience with this particular method. Empirical analysis of all attempts at peaceful resolution of territorial disputes from 1945 to 2003 shows that challenger states use their own record of victories and failures, as well as the win/loss record of the target as indicators of the probability of winning in a subsequent dispute. This pattern is especially strong for the binding third-party methods, arbitration, and adjudication.

## Keywords

territorial disputes, conflict management, past experience, negotiations, third-party resolution methods

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The proper management and resolution of international disputes is critical to international security.[1] Yet states involved in international disputes are repeatedly unable or unwilling to resolve their disputes, leading to ongoing tensions that sometimes escalate to armed conflict. States have many options available to attempt peaceful resolution of their disputes with other states, such as bilateral negotiations, mediation, and adjudication. Why do some states attempt to resolve their disputes only using bilateral negotiations, whereas other states are willing to take their case to the International Court of Justice (ICJ)? Do states have preferences about settlement mechanisms or is it just that they will try anything to resolve their international disputes? The purpose of this study is to further our understanding of states' preferences regarding peaceful resolution methods. By providing some insight into these preferences, specifically in territorial disputes, we can better predict the potential effectiveness of attempts to settle interstate disputes.

We present a theory that portrays peaceful resolution of disputes (PRD) as a strategic quest for the best forum. We assert that when making decisions regarding methods of peaceful resolution, challenger states carefully consider their past win/loss record in every possible method of PRD. During the process of decision making, a challenger state's final choice of a method is strategically based on its past experience with this particular method. Challenger states use their own and the target states' past win/loss record to provide them with clues about the most trustworthy ways to settle territorial disputes. We find support for our conjecture and show that an important relationship exists between states' past win/loss record and their choices of interstate conflict management strategies. Past record of victories and failures matters most for the challenger states that want to repeatedly resort to binding methods of peaceful resolution—arbitration and adjudication. Overall, our results indicate that some PRD methods can yield a clear-cut winner/loser dichotomy, which can shape challenger states' preferences in their future dispute resolution attempts.

## Previous Research on the Peaceful Resolution of Territorial Disputes

Despite the heavy emphasis on initiation and escalation of territorial disputes in the literature, a considerable number of recent studies have focused on peaceful resolution. Scholars are recognizing that dispute resolution is as important, if not more important than causes of conflict, particularly because the options for resolution are abundant (Frazier 2006; Hensel et al. 2008). This genre of research has primarily examined the general likelihood of whether states will attempt peaceful resolution or not (Allee and Huth 2006; Chiozza and Choi 2003; Hensel 2001; Hensel et al. 2008; Huth 1996; Huth and Allee 2002; James, Park, and Choi 2006). Yet, existing literature has been somewhat limited regarding how peaceful resolution occurs and through which methods. The studies that do exist discuss several influential factors that relate to characteristics of the disputed territory (value/salience), characteristics

of the states involved (regime type and membership in international organizations), and relations between the states involved (relative power relations and alliances).

The most prevalent literature on factors influencing states' choices regarding dispute resolution methods is rooted in the democratic peace argument. Studies within this genre of scholarship examine the normative and structural aspects of democracy and their influence on states' willingness to use more binding, formal methods including arbitration and adjudication (Allee and Huth 2006; Dixon 1993; Gent and Shannon 2008; Huth and Allee 2002; Mitchell 2002; Mitchell and Hensel 2007; Mitchell, Kadera, and Crescenzi 2008; Raymond 1994; Shannon 2009; Simmons 2002). For example, Mitchell (2002), specifically focusing on territorial disputes in the Americas, finds that the higher the proportion of democracies in the international system, the more likely it is that nondemocratic dyads will use third-party resolution methods. The underlying argument is that a higher proportion of democracies in the international system provides an opportunity for the spread of democratic norms, which influence nondemocracies.

Simmons (2002) argues that international arbitration or adjudication provide democratic leaders with useful means to settle a dispute when domestic political opposition is likely to block a negotiated solution. In short, binding third-party methods are often perceived by the polity as more legitimate and thus more likely to yield a favorable outcome. Similarly, Allee and Huth (2006) find that the likelihood of binding, legalized dispute resolution is three times more likely than using other methods when the disputing states have democratic political institutions. Their argument is based on the idea that legalized binding resolution methods can act as more legitimate political cover for leaders who anticipate potential opposition to such resolution attempts (Huth and Allee 2002).

However, more recent findings about conflict management and territorial disputes specifically show contrary evidence about democratic dyads and third-party resolution attempts. Shannon (2009) finds that democratic dyads are no more or no less likely to attempt third-party resolution methods compared to other dyads. Gent and Shannon (2008) argue that binding dispute resolution attempts can be just as costly to domestic audiences because decision makers can be punished for giving up sovereignty to an arbitrator or international court. These studies are consistent with the findings of Mitchell, Kadera, and Crescenzi (2008) that demonstrate that democratic dyads are not more likely to choose third-party resolution methods.

Another characteristic of states that is found to influence the choice of resolution methods is states' membership in international organizations. This is an important potential factor because international organizations often play the role of mediators or arbitrators (Abbott and Snidal 1998; Bercovitch and Schneider 2000). The general argument is that disputing states are more willing to go to international organizations and other third parties for help with dispute resolution because bilateral negotiations require a level of trust that disputing states often lack, especially in the case of territorial disputes. Hensel (2001) finds that dyads that have signed and ratified more treaties calling for the peaceful settlement of disputes among members are more

likely to resort to nonbinding third-party methods. Hansen, Mitchell, and Nemeth (2008) argue that joint membership in peace-promoting international organizations substantially increases the involvement of the international organizations in dispute resolution. This study discovers that the higher the number of organizations and treaties calling for pacific dispute settlement among members that both states have accepted, the more likely binding methods will be. In a study about the influence of expanded democratic norms on the likelihood of territorial, maritime, and river dispute resolution, Mitchell, Kadera, and Crescenzi (2008) show that the greater the number of peace-promoting organizations the states in the dyad belong to, the more likely they will attempt third-party resolution methods, especially by democratic states and international organizations. Shannon (2009) has similarly found that as dyads increase their level of participation in international organizations, they are more likely to attempt third-party resolution methods, relative to bilateral negotiations.

In terms of characteristics of the disputed territory, the value/salience of the territory is also shown to influence the choice of resolution method, but the results are mixed. Several scholars argue that a low or high level of salience based on factors such as valuable resources, ethnic links to the territory, strategic value, homeland territory, mainland territory, or territory that contains permanent populations will influence the choice of PRD. For example, Hensel (2001) finds that higher salience of territory makes bilateral negotiations more likely, yet at the same time, salience does not necessarily affect the choice of third-party resolution methods. More recently, Gent and Shannon (2008) show that as the salience value of the disputed territory increases, nonbinding third-party resolution methods are less likely to occur. Yet Mitchell, Kadera, and Crescenzi (2008) show a positive relationship between higher salience level and third-party resolution methods.

Focusing only on ethnic and strategic value of territory, Allee and Huth (2006) demonstrate that ethnic value in particular increases the likelihood of more binding methods of resolution. This finding is premised on the argument that ethnic value provides salience for domestic audiences, making binding resolution methods less costly for decision makers. However, Allee and Huth (2006) do not find any relationship between strategic value of the territory and attempt to settle the dispute via more legalized methods, such as arbitration and adjudication. In terms of economic value of territory, Simmons (2002) similarly does not find any relationship between resources present in the disputed territory and the likelihood of arbitration in territorial disputes.

Confirming realist expectations, a number of studies find that power relations between the disputing states influence the choice of resolution method (Allee and Huth 2006; Hansen, Mitchell, and Nemeth 2008; Hensel 2001; Hensel et al. 2008; Mitchell 2002; Shannon 2009; Simmons 2002). The logic of the argument is that the more powerful state in a dyad is unlikely to trust and accept third-party judgments, whereas states with relative power parity are more willing to trust binding resolution outcomes. In a study on the likelihood of arbitration in the resolution of Latin American territorial disputes, Simmons (2002) shows that arbitration is much less likely

when there is greater power asymmetry between disputing states. Mitchell (2002) also finds that third party involvement in dispute resolution decreases as power asymmetry increases.

Echoing the realist argument, several studies have examined the role of military alliances in peaceful dispute resolution. This literature suggests that binding resolution methods are less likely when the disputing states have a military alliance, because their common security interests may encourage more direct bilateral negotiations (Allee and Huth 2006; Huth 1996). Similarly, in a study on the likelihood of mediation in territorial disputes, Frazier (2006) finds that when a third party is allied with one of the disputing states, this relationship does not influence the likelihood of third-party mediation.

## Past Experience and Choosing a Forum for Peaceful Resolution

Despite the plethora of studies on dispute resolution, it is not clear how past experience with different methods of PRD may predict states' future choices. Additionally, the studies that do mention past experience do so in a relatively narrow way. Hensel et al. (2008, 127) find that states are more likely to pursue peaceful settlements in general "when they have a history of recent militarized conflict over the same issue and/or a history of recent failed attempts to settle the same issue peacefully." Recent peaceful settlement in a particular dispute plays an important role, as previous failed attempts at peace subsequently increase pressure to undertake further action to settle this particular dispute. Focusing more on the choice of dispute resolution methods, Hensel (1999) finds that history of failed settlement attempts in a particular dispute increases the probability of subsequent third-party assistance, whereas the history of successful settlement attempts increases the probability of bilateral negotiations. Similarly, Hensel (2001) confirms that third-party methods such as mediation or arbitration are most likely to be employed by adversaries that have a history of failed agreements. Gent and Shannon (2008) find that previous successful settlement attempts reduce the likelihood that decision makers will seek binding resolution methods. However, Allee and Huth (2006) do not find support for their conjecture that state leaders are more likely to use legalized dispute resolution methods when past bilateral negotiations have failed.

To our knowledge, only the above-mentioned handful of studies recognize that past experience with peaceful settlement plays a role in states' decisions to settle their disputes peacefully. However, the approach taken is relatively narrow in that only past experience with peaceful settlement in a particular dispute is taken into consideration. Past experience with different methods of PRD in other or prior territorial disputes is not examined. We believe that states learn from all of their past interactions with each method of PRD. Thus, outcomes of resolution attempts in other territorial disputes play a role in states' subsequent choices of a PRD method. If a PRD method has yielded a favorable outcome for a state, the state is more

inclined to choose this method again. For example, if arbitration has led to a favorable outcome for a particular state in the past, this state should be more likely to resort to arbitration in its subsequent disputes, including disputes over different territories and disputes with different opponents. In the same way, if a state has lost a dispute in a particular forum, it should try to avoid this particular forum in its subsequent disputes. Our expectation that the past win/loss record matters is based on the fact that states that emerge as winners after resorting to a particular PRD method are more satisfied with this method compared with the loser states.

After making a decision to resolve a dispute peacefully, a state has to make yet another crucial decision—the choice of a particular method of PRD. Several options are readily available to states, particularly to challengers who are claiming territory and wishing to change the status quo; the choice, depending on circumstances of a particular dispute, may not be obvious. In bilateral negotiations, states attempt to settle their grievances without any third party involvement. Unlike the highly political nature of negotiations, resolutions involving third parties entail rules, procedures, and decisions about resolution (Kratochwil 1985). In the case of good offices, a third party is asked to induce the disputing states to negotiate a peaceful settlement (Cassese 2005). The purpose of a commission of inquiry is to ascertain the contentious facts (Shaw 2003). During the process of conciliation, a third party considers all elements of the dispute and formally submits suggestions for a settlement. In mediation, the disputing states invite a third party to influence their perceptions or behavior regarding the dispute, providing a more active role for the third party in the negotiating process (Bercovitch and Rubin 1992). Arbitration and adjudication both constitute binding means of settling disputes according to international law, with disputants agreeing in advance to accept the award (arbitration) or judgment (adjudication); both are based on relatively formal procedures of settlement (Powell and Wiegand 2010).

Like relations between the plaintiff and the defendant in a domestic legal system, international dispute settlement can engender "winners" and "losers" (Franck 1995; Gamble and Fischer 1976; Powell and Wiegand 2010). Despite the efforts on the part of several adjudicative international bodies to avoid branding winners and losers (Alvarez 2005), states still tend to hold on to this dichotomy even in cases when a PRD method has yielded an outcome partially acceptable to both sides. For example, in the context of two ICJ cases, the *Diplomatic Staff in Teheran* and the *Nicaragua* cases,[2] Merrills (2005, 176) argues that winning constitutes an important part of the post-adjudicative scene as "a state which takes its case to the Court and wins gains vindication for its position from an authoritative and disinterested source." According to Shapiro (1981, 19), in cases of third-party dispute resolution, the moment that the third party makes a decision that favors one of the disputants, the losing party often times perceives the conclusion of proceedings as an illegitimate and biased outcome, a "two against one." At the same time, the role of a third party might be perceived "not as conflict resolver but as a coercer" (Shapiro 1981, 19). Although Shapiro's arguments are designed to describe domestic courts, "his

approach seems readily adaptable to international dispute settlement" (Alvarez 2005, 530), as numerous elements of international dispute resolution, especially third-party methods, approximate domestic mechanisms.[3]

States' perceptions of winning and losing are exacerbated by the fact that international third-party resolution is sometimes employed "to declare who is right or who is wrong" (Fiss 1979, 24). Outcomes of such a definitive nature are frequently the consequences of high-profile disputes, and "tend to leave at least one party dissatisfied" with the solution (Franck 1995, 318-19). Dissatisfaction with the outcome is inescapably interconnected with the political aura of territorial disputes. According to Rosenne (1985, 2), international litigation "is but a phase in the unfolding of a political drama." The quarreling states more often than not approach the disputed issue with much fervor. Former UN Secretary General Boutros Boutros-Ghali has stated in the context of dispute resolution offered by the UN, that "the parties to a dispute are extremely sensitive and this makes it important that they should have confidence in the impartiality or the objectivity of the United Nations and its Secretary-General."[4]

Because of the negative context of the winner–loser dichotomy, several international methods of dispute resolution have embraced consent-based mechanisms of recommendations in place of formal judgments or awards.[5] In the case of territorial disputes, however, the situation is somewhat different, as dispute resolution methods are rarely able to avoid winner–loser perceptions because settlement involves the loss or gain or territory. Consider that of all the territorial disputes settled between 1945 and 2003, 52 percent have involved division of territory, whereas the remaining 48 percent involved the challenger or target receiving all of the disputed territory (Wiegand 2010b). This means that in almost half of the settled territorial disputes, one state "won" by acquiring or keeping the majority or all of the disputed territory, and the other state lost the disputed territory or its claim to the territory was nullified. As a result of these divisions of territory, states tend to view the outcome of any PRD method as either furthering their interests or not.

Perceptions of winning or losing play a much larger role in binding third-party methods because the consequences of a binding judicial decision or an arbitration award carry substantially graver consequences. Von Glahn and Taulbee (2007, 528) point to the fact that adjudication has an important "winner–loser" effect that "adds to the possible psychological costs and impact over time." For example, threatened by a possibility of an unfavorable ICJ judgment in the *Nicaragua* case, in 1985 the United States withdrew its optional clause declaration, stating that "our experience with compulsory jurisdiction has been deeply disappointing" (U.S. Department of State Bulletin 1986). Arbitration is also highly likely to produce clear winners and losers because it usually yields a starkly asymmetric award (Baratta 1989). Consider the *Eritrea-Yemen* Arbitration (1998–1999), in which the Permanent Court of Arbitration determined in its final decision that the Hanish Islands belonged to Yemen so that Yemen emerged as a clear winner. Documenting 451 cases of interstate arbitration in the time frame of 1789 and 1990, Stuyt (1990)

demonstrates that in 225 of these cases, a winner could be identified, and only 30 arbitration cases constituted a compromise.

The existence of obvious winners and losers is made evident by remedies used by binding third-party PRD methods. For example, in *El Salvador v Nicaragua*,[7] the Court of Justice of Central America awarded restitution by holding that Nicaragua was obliged to re-establish and maintain the legal status of the border that was in place prior to the Bryan-Chamorro Treaty. Similarly, in *Temple of Preah Vihear*, the ICJ declared the location of the border between Thailand and Cambodia, ordering at the same time the return of several objects removed from the temple by Thai authorities to Cambodia (Brown 2007, 196).[8] Moreover, several adjudicative bodies use other types of remedies, such as mandatory orders and compensation, which make clear which disputant has taken a larger loss as a result of a judgment (Brown 2007).

Usually, preferences of one side are satisfied to a larger degree than preferences of the other disputant, even when both states gain some amount of territory. The dissatisfaction of Nigeria in the 2002 ICJ ruling of *Land and Maritime Boundary Between Cameroon and Nigeria* illustrates this point.[9] The decision was mostly in favor of Cameroon, but it also provided Nigeria with what the court believed was a fair amount of territorial concessions. Yet within a week of the September 2002 ruling, Nigeria, the self-perceived loser, submitted a position paper to the court, complaining that "the judgment did not consider 'fundamental facts' about the Nigerian inhabitants of the territory, whose 'ancestral homes' the Court adjudged to be in Cameroonian territory" (United Nations Department of Public Information 2006). As a result of Nigeria's essential rejection of the court's findings, UN Secretary General Kofi Annan agreed in November 2002 to further resolve the territorial dispute through mediation. In June 2006, Nigeria and Cameroon signed the Greentree Agreement, in which Nigeria agreed to enforce the 2002 ICJ settlement because mediation by the UN Secretary General's office had helped the two states agree to additional nonterritorial concessions for Nigeria in exchange for the transfer of territory to Cameroon.[10] Additionally, after a binding decision has been rendered, the international community expects states to comply with it (Simmons 1999). In the context of international adjudication, Franck (1995, 330) argues that, "Decisions of the ICJ are 'enforced' primarily in the court of public opinion. That a losing party in a World Court case will become the victim of bad publicity is often the only expectation motivating resort to the Court."

Greater expectations of compliance suggest that losing carries much graver consequences in binding PRD methods. Mediation, conciliation, and other nonbinding third-party methods are designed to soften the clear-cut winner–loser dichotomy. All of these methods are conducted through a continuous dialogue between the disputants, and usually there is no danger of "producing a result that takes the parties completely by surprise, as sometimes happens in legal proceedings" (Merrills 2005, 89). Second, the proposals of a third party can be rejected if deemed unacceptable. However, history of repeated use of nonbinding third-party mechanisms shows that despite their consensus-based nature, these methods can still create perceptions of

losing or winning a case. For example, final decisions of these less formal, nonbinding methods often further the interests of one disputant over the other. Consider the Franco-Siamese Conciliation Commission, which after lengthy deliberations drew up a report suggesting minor adjustments of the border between Siam (Thailand) and French Indo-china. In 1947, Siam brought a claim to the Commission which suggested that the Siamese border with French Indo-china should be modified to take into consideration geographical and economic factors. France of course disagreed with Siam's claims. The final decision of the Commission was supportive of the French position, as "the Commission's Report was effectively a rejection of the Siamese claim" (Merrills 2005, 68). As a consequence of conciliation, Siam clearly emerged as a loser and France as a winner.

We argue that states' a priori experiences with different PRD methods matter in the process of shaping their a posteriori perceptions of these methods. Past success or failure associated with the use of a particular PRD method in the past is likely to affect the choice of a PRD method in a subsequent dispute. Ceteris paribus, states cannot be sure as to the result of dispute settlement using any PRD method ranging from bilateral negotiations to the most legalized adjudication. Because several PRD methods are available, states will seek a particular forum by relying on their own experience to maximize their chances of winning. As Merrills (2005, 63) succinctly puts it, "the fact of the matter is that states are often less interested in settling a dispute than in having their view prevail." Their past win/loss record in different PRD methods serves as a guideline in the quest for the most favorable forum. We believe that a state is less likely to resort to a PRD method that has not yielded a favorable outcome in the past and is more likely to use a PRD method that has previously fulfilled this state's expectations.

The strategic quest for an appropriate forum that states engage in resembles, but only in part, the process known in domestic law as forum shopping. Forum shopping has been defined as a litigant's attempt "to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict" (Black, Nolan, and Connolly 1979). States' quest for the best PRD method is somewhat different because the decision between binding, nonbinding, and bilateral techniques involves relatively broad choices between types of settlement techniques, and not choices between specific courts or judges. Nevertheless, just as domestic plaintiffs, states strategically attempt to find a forum that will be most likely to yield a favorable outcome. The general rule in international law is that states are expected to pursue peaceful resolution of their disputes.[11] However, they have complete freedom regarding the choice of a PRD method.[12]

Speaking of bargaining strategies, Jervis (1976, 280) argues that policymakers interpret unsuccessful outcomes as failures of policy and they react subsequently by switching to a different bargaining strategy. Similarly, a successful policy is likely to encourage the policy makers to apply the same bargaining strategy in a later dispute. For example, if a state has received territorial concessions in the past as a result of international adjudication, this state should be more likely to resort to

international courts in its subsequent territorial disputes. When a state has a record of winning, it is more likely to perceive international adjudication as the most favorable forum for settling disputes. In short, states use their past experience—win/loss record in past disputes—as an indication of the probability of winning in a subsequent dispute. Previous victories achieved via a PRD method increase states' trust in this method, because in their view, previous positive experience with a method increases the predictability of another positive outcome, whereas previous losses generate a negative experience.

States' behavior seems to support our expectations. Winning encourages states to repeatedly resort to the same PRD methods. An example is the 2003 agreement by Malaysia to take its case against Singapore to the ICJ in the *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore*) case.[13] Prior to this decision by Malaysia, on December 17, 2002, the ICJ ruled in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* in favor of Malaysia.[14] The very next day, the Malaysian Deputy Prime Minister announced that winning the case against Indonesia had encouraged Malaysia to take its case against Singapore to the ICJ: "Pulau Batu Puteh will be next ... following the positive outcome of arbitration by the ICJ on the dispute between Malaysia and Indonesia over Sipadan and Ligitan" (*Bernama News Agency* 2002). According to observers of the Malaysia–Singapore case, between 1998 and 2002, "there was no movement towards ICJ resolution. However, Malaysia's victory in its Sipadan dispute with Indonesia last December [2002] reignited its media's interest in Pedra Branca," prompting Malaysia to agree to ICJ resolution of its dispute with Singapore on February 6, 2003, only six weeks after Malaysia won its case against Indonesia (Lim 2003).

Losing, however, seems to dampen states' enthusiasm toward a particular PRD method. If a state has lost in the past by resorting to a particular PRD method, it will be unlikely to use it again. As Jervis (1976) suggests, switching to a different bargaining strategy may be in order. In terms of international adjudication, Gamble and Fischer (1976, 21) propose that "states are reluctant to submit important disputes to judicial settlement because of the risk of losing. On the other hand, where no great national interests are involved, the risk of losing may be offset by the chance of winning as well as interest in having the matter authoritatively settled." For example, in 2005, the ICJ ruled in favor primarily of Niger in a case against Benin, making Benin the perceived loser of the dispute. Currently Benin is involved in another territorial dispute with Burkina Faso over their border and the status of two occupied villages along the border, yet Benin has not made any attempt to take the case to the ICJ, but instead agreed in 2006 and 2007 to mediation attempts by the Economic Community of West African States (ECOWAS; Central Intelligence Agency 2008; *People's Daily* 2006).

Because it is the challenger state that questions the status quo and seeks to change it, the choice of a forum will be to a large extent dependent on its preferences.[15] Just as with a domestic law plaintiff, it is the challenger who is "the master of the

complaint," who is trying to assure its victory. By engaging in a strategic quest for a forum, the challenger state may feel as though it has a degree of control over the possible outcome of the settlement. It is the challenger that is questioning the status quo and aiming to change it. It is the challenger's reputation, therefore, that can suffer greater damage if the judicial decision or an arbitration award does not further its interests. Its past victories and losses shape the challenger's perceptions of all methods of peaceful resolution. In the process of choosing a PRD method, the challenger will make the best effort to convince the target to agree to a forum that, in the challenger's eyes, best suits its own interests.

In making its decision to propose a particular method to the target, the challenger will also consider the past win−loss record of its opponent. For a challenger, the best possible forum would be a method that not only has yielded a good win−loss record for the challenger but also has not proven to be too favorable to the target. Granted, the challenger is also aware of the fact that the target has no obligation to agree to any particular method, especially one that has not proven to be beneficial to the latter. In proposing a forum, the challenger must carefully weigh the costs and benefits of each PRD method for both disputants, at the same time maximizing its own chances of winning.[16] As such, the challenger's choice is not fully independent, but instead directly linked to the preferences, and the win−loss record of the other side, making the choice strategic and interactive.

Win/loss record does not matter equally in all PRD methods. First, we believe that it matters more in third-party methods than in bilateral negotiations. Presence of a mediator, conciliator, good offices, arbitration panel, or a panel of judges naturally causes the disputants to form expectations and opinions regarding the third-party's decision. It is the process of delegation to an agent that sparks greater a priori uncertainty regarding the outcome of a dispute and generates a posteriori perceptions of winning and losing. It is the same process of delegation that causes states to analyze their prior performance in a particular PRD method before resorting to this method again. Second, because of the inherently binding nature of arbitral awards and judgments of international courts, we believe that the win/loss record matters most in binding third-party methods—arbitration and adjudication. Both arbitration and adjudication are based on relatively formal procedures of settlement, both attempt to settle the dispute according to international law (Shaw 2003; Simmons 2002). Previous success in such prominent forums may cause the challenger state to attempt international dispute resolution via these methods in hope of reaching a favorable decision yet again, one that will be viewed as legitimate and unbiased by the international community. A challenger's previous successes encourage its repeated resort to binding third-party methods with the hope that the forum will be unbiased, or better yet, biased toward the challenger's position.

Based on our theory, we propose the following hypotheses:

*Hypothesis 1*: A challenger state with a positive win−loss record in a third-party PRD method is more likely to pursue the same method again.

*Hypothesis 2*: The challenger's past win/loss record has greater influence on the pursuit of binding PRD methods than it does on the pursuit of bilateral and nonbinding PRD methods.

## Research Design

Our analysis covers all territorial disputes from 1945 to 2003. The unit of analysis is any attempt made by the challenger state to peacefully resolve the dispute in any given dyad year. Attempts at peaceful settlement are considered calls for bilateral negotiations about the sovereignty of the disputed territory, calls for good offices, conciliation, or mediation of a third party, an attempt at arbitration by a third party, or an attempt at adjudication by an international court, mainly the ICJ. What matters for the purpose of this study is if a challenger made an attempt to resolve a territorial dispute, not whether a PRD method was actually used. Although peaceful settlement of disputes fundamentally hinges on the mutual consent of states, what we are trying to capture here is not a choice jointly made by both disputants, but the preferences of each state separately, in this case, the challenger specifically. Because each disputant has different experiences with different peaceful resolution methods, preferences of one side may not be congruent with the preferences of the other side. In other words, we believe that the process via which the challenger proposes different methods of PRD directly reflects what we want to measure—its own preferences. Having an attempt at peaceful settlement by the challenger as our dependent variable allows us to do just that. Within one dispute, there may be several attempts at peaceful resolution, as the challenger and the target may subsequently suggest quite different methods of PRD. Yet to be included in the data, the attempt did not have to be mutual, nor did the PRD method have to actually occur; only the challenger had to make an attempt at a PRD method. Consider the dispute between Bahrain and Qatar, where over the time span of 30 years, each state separately proposed different methods of PRD. As the challenger state, Qatar preferred and pushed for ICJ adjudication and Bahrain preferred bilateral negotiations or regional mediation by the Gulf Cooperation Council or Saudi Arabia (Wiegand 2010a). Our data capture attempts reflecting the distinct preferences of the challenger state in any given year.

To be incorporated in the data, settlement attempts had to include discussions about recognition of sovereignty, potential territorial concessions, or changes in ownership. Thus, we include in our data only substantive attempts at settlement, not functional or procedural attempts.[17] Method of PRD attempted by the challenger, the dependent variable, is categorical and consists of the following three categories: bilateral negotiations (1), nonbinding third-party methods (2), and binding third-party methods (3), which includes arbitration and adjudication. Data on bilateral negotiations are taken from the Huth and Allee (2002) data set on territorial disputes.[18] For challenger attempts at nonbinding and binding third-party methods, we gathered our own data using the following sources: Allcock (1992), Bercovitch (1999), the Central Intelligence Agency (CIA) World Factbook (2008), Day (1987),

Downing (1980), the Issue Correlates of War data set (Hensel et al. 2008), the ICJ docket of cases, and news articles about territorial disputes from Lexis-Nexis and the International Boundary Research Unit (IBRU) database (IBRU 2007).[19]

To test our theoretical expectations regarding states' past experience with PRD methods, we include a set of explanatory variables for past wins and losses for both the challenger and target states—Past Win−Loss Record (Challenger), and Past Win−Loss Record (Target). First, we gathered information on states' victories and losses in each PRD method for the period 1945−2003. We took into consideration all settled attempts, which means that we coded final outcomes of negotiations, nonbinding third-party methods, arbitration and adjudication, and counted the total number of past wins and losses that had occurred in previous years. Measuring a win in a territorial dispute may not always appear straightforward and clear-cut, as both disputants may receive substantial territorial concessions, and consequently perceive themselves or the other side as winners. In cases where territorial concessions were relatively equal, we coded each disputant as a winner. Our decision was guided by the underlying logic that a "50−50" outcome does not produce a clear "loser," and this outcome may still encourage both challenger and target to return to this particular method. Consider the Hawar Islands dispute between Qatar and Bahrain, where both states felt like they won in front of the ICJ.[20] If, however, a settlement yielded a clear winner (more than 50 percent of territorial concessions), this particular state was coded as a "winner," and the opposite side was coded as a "loser."

Second, because challenger states' past experience with any PRD method consists of both victories and failures, we combined information regarding both losing and winning into a set of independent variables—Past Win−Loss Record (Challenger). We divided the number of victories by the sum of victories and losses to obtain a "batting average" for the challenger in each different method of PRD prior to an attempt in any given year (negotiations, nonbinding third-party methods, binding third-party methods).[21] The resulting scale ranges from 0 (*negative experience*) to 1 (*positive experience*). To minimize the resulting missing data, for states that had no experience with a particular method, we assigned a value of 0.5 for each applicable year to indicate their indifference toward a respective method.[22] Because we believe that the challengers take into consideration the target's win−loss record as well, we included an analogical set of independent variables for the target states—Past Win−Loss Record (Target). All these data were collected by the authors using the above cited sources.

To account for alternative explanations suggested by the literature on dispute resolution, we incorporated several control variables in the model including value of territory, past conflict experience, power asymmetry, democratic dyad status, alliance, and treaty commitments. The first set of control variables, strategic, ethnic, or economic value of the disputed territory account for the explanation that territorial value may have a strong impact on attempts to settle a territorial dispute (Hensel 2001; Huth 1996). Disputed territory has strategic value if it is located at or near military bases, major shipping lanes, or choke points for ships. Territory has economic value if it is located at or near a significant amount of natural resources such as

**Table 1.** Attempts at Peaceful Resolution of Disputes

| | Percentage of Years (1945–2003) |
|---|---|
| Bilateral negotiations | 77% |
| Nonbinding third party | 17% |
| Binding third party | 6% |

Note: $N = 1{,}341$.

fishing grounds, oil, iron, copper, or diamonds. The territory has ethnic value if there are ethnic minorities living on the other side of the border. Each of these dummy variables is coded 1 if the disputed territory has a particular value and 0 otherwise.

To account for past conflictual relations, we included a variable called Past Conflict, constructed using the Correlates of War data set (Jones, Bremer, and Singer 1996). This variable is a dummy variable, coded 1 if the states had fought an armed conflict in the last 50 years. The variable Power Asymmetry is added in the model to account for the expectation in the literature that disputants should be more likely to go to third parties when they are in a situation of power parity. This variable is measured using the Correlates of War's National Capabilities Index, dividing the larger of the two military capabilities' scores by the sum of the two. A resulting score of 0.5 indicates perfect parity whereas a value of 1.0 indicates total asymmetry.

Democratic Dyad, coded as a dummy variable, captures whether the challenger and target both share similar Polity IV democracy scores in any given dyad year. This variable controls for the influence of regime type on states' choices of different methods of PRD (Dixon 1993; Mitchell 2002), and it is coded 1 if both states in the dyad score 6 or more on the Polity IV scale. Alliance is coded 1 if an alliance existed between the challenger and the target in any given year. We use the Alliance Treaty Obligations and Provisions (ATOP) data set (version 3.0), which includes information about the alliance commitments shared by a pair of states in a given year (Leeds, Long, Mattes, Mitchell, Ritter, and Savun, 2005). Our final control variable, Treaty Commitment, measures the number of pacific settlement commitments (global and regional treaties) in which both states in a dyad are members at some point during the same year. We obtained this variable from the Multilateral Treaties of Pacific Settlement Data Set—Issue Correlates of War (ICOW) Project (Hensel 2005).

## Empirical Analysis

Most challenger states propose bilateral negotiations in attempts to resolve their territorial disputes, as shown in Table 1. Of the PRD methods, bilateral negotiations were most popular (77 percent), followed by nonbinding third-party methods (17 percent). Attempts at binding third-party methods are the least popular (6 percent). Our data also reveal interesting patterns regarding win–loss record:

in the time span of 1945–2003, challenger states won all or most of the territorial settlements 23 percent of the time, half of the disputed territory 34 percent, and lost (meaning the target gained most or all of the territory) in 43 percent of settled disputes. Turning to multivariate analysis, we estimated a multinomial logit model.[23] Recall that our dependent variable, the challenger's choice of PRD method consists of three distinct categories: bilateral negotiations, nonbinding third-party methods, and binding third-party methods. Table 2 presents estimates from this model and Table 3 presents predicted probabilities to ascertain the substantive effect of each variable, holding all others at their mean or mode.

In general, past win/loss record matters greatly for the challenger states that attempt peaceful resolution of a territorial dispute. Importantly, the challenger pays close attention not only to its own experiences with each PRD methods; as a strategic player, the challenger also diligently examines the target's past win–loss record. The challenger's final proposition of a method is based on both of these components. Interestingly, however, both sides' win–loss records matter differently in each PRD method. A challenger state that has won using negotiations in the past is more likely to propose negotiations to a target yet again. As Table 3 demonstrates, predicted probabilities for such a challenger are higher (.92) than for a challenger with a negative experience in bilateral talks (.70). In between these two extremes is a challenger state whose experience with negotiations is neutral (number of wins equals number of losses) or who has never attempted negotiations before in settling a territorial dispute (predicted probabilities .84). These patterns demonstrate a rise in the likelihood of a challenger state attempting negotiations, as his experience with this method changes from negative to positive.

Effects concerning the challenger's past win/loss record in binding third-party methods mirror almost exactly the patterns we discovered with bilateral negotiations. Predicted probabilities show that a challenger state that has positive experience with arbitration and adjudication is almost four times as likely to propose these methods again versus a challenger that has suffered a loss (predicted probabilities .11 and .03, respectively). Previous success in such prominent forums may cause the challenger state to attempt international dispute resolution via these methods in the hope of reaching a favorable decision yet again.

The target's past experience with these methods also influences the challenger's choice. The challenger is four times more likely to propose binding third-party methods if the target had a negative experience with these methods (.12 vs. .03). A decision to resort to either arbitration or adjudication is, on average, much harder to make than a decision to resort to less legalized PRD method. Obviously, the consequences of a binding judicial decision or an arbitral award carry substantially more serious consequences, as the international community expects states to comply with these decisions (Simmons 1999). This fact imposes important "psychological costs" on the parties (Von Glahn and Taulbee 2007, 528). Simply put, delegating authority to a binding PRD method, with which the opposing side—the target, has positive experience, may be risky. However, proposing either arbitration or adjudication is very tempting to the

**Table 2.** Multinomial Logistic Results—Challenger Attempts at Peaceful Resolution of Disputes[a]

| Nonbinding Third-Party Methods | |
|---|---|
| Past win−loss record (challenger) | |
| Negotiations | −1.527*** (0.446) |
| Nonbinding third party | −0.089 (1.16) |
| Binding third party | 0.528 (0.644) |
| Past wins−loss record (target) | |
| Negotiations | 0.102 (0.394) |
| Nonbinding third party | 2.23*** (0.815) |
| Binding third party | −0.478 (0.461) |
| Ethnic value of territory | −0.054 (0.187) |
| Economic value of territory | 0.014 (0.206) |
| Strategic value of territory | 0.483*** (0.173) |
| Power asymmetry | 0.000 (0.000) |
| Past conflict | 0.725*** (0.168) |
| Alliance | 0.142 (0.226) |
| Treaty commitment | 0.007 (0.045) |
| Democratic dyad | −0.189 (0.209) |
| Constant | −2.58 ***(0.976) |
| **Binding third-party methods** | |
| Past win−loss record (Challenger) | |
| Negotiations | −1.62*** (0.628) |
| Nonbinding third party | 2.24** (1.30) |
| Binding third party | 1.5** (0.741) |
| Past win−loss record (Target) | |
| Negotiations | −0.553 (0.545) |
| Nonbinding third party | −1.54* (1.09) |
| Binding third party | −1.39*** (0.688) |
| Ethnic value of territory | −0.398*** (0.229) |
| Economic value of territory | −00.504** (0.237) |
| Strategic value of territory | 0.341* (0.232) |
| Power asymmetry | −0.002** (0.001) |
| Past conflict | −0.271 (0.221) |
| Alliance | −0.026 (0.275) |
| Treaty commitment | 0.158*** (0.052) |
| Democratic dyad | 0.328 (0.255) |
| Constant | −1.33 (1.28) |
| *N* | 1,341 |

Note: Pseudo-$r^2$: .074; Log likelihood: −892.49145.
[a] Bilateral negotiations is the base outcome.
*$p < .10$,
**$p < .05$,
***$p < .01$, standard errors in parentheses.

**Table 3.** Predicted Probabilities—Challenger Attempts at Peaceful Resolution of Disputes[a]

| | | Negotiations | Nonbinding Third Party | Binding Third Party |
|---|---|---|---|---|
| | Challenger past win−loss record | | | |
| Negotiations | Negative experience | .70 | .19 | .11 |
| | No. of wins = no. of losses or no experience | .84 | .10 | .06 |
| | Positive experience | .92 | .05 | .03 |
| Binding Third Party | Negative experience | .89 | .08 | .03 |
| | No. of wins = no. of losses or no experience | .85 | .09 | .05 |
| | Positive experience | .78 | .12 | .11 |
| | Target past win−loss record | | | |
| Nonbinding Third Party | Negative experience | .84 | .03 | .13 |
| | No. of wins = no. of losses or no experience | .85 | .10 | .05 |
| | Positive experience | .71 | .26 | .02 |
| Binding Third Party | Negative experience | .77 | .12 | .12 |
| | No. of wins = no. of losses or no experience | .84 | .10 | .06 |
| | Positive experience | .88 | .08 | .03 |
| | No strategic value | .85 | .10 | .05 |
| | Strategic value | .79 | .14 | .07 |
| | No past conflict | .85 | .10 | .05 |
| | Past conflict | .78 | .18 | .04 |
| | No treaty commitments (0) | .87 | .10 | .04 |
| | Maximum treaty commitments (11) | .73 | .09 | .18 |

[a] Only statistically significant and substantially meaningful results in Table 2 are shown here.

challenger if the target has had a negative experience with them. At the very least, the challenger's fears of resorting to a possibly target-biased binding PRD method are minimized. The challenger also uses the target's past experience with any third-party methods as clues in making a decision to resort to adjudication or arbitration. Note that if a target has had a successful past experience even with nonbinding third-party methods, the challenger is less likely to propose legalized PRDs.

Interestingly, success achieved through binding PRD methods can also instigate the challenger's resort to nonbinding methods. Our results demonstrate that positive experience with either adjudication or arbitration causes the challengers to be more trusting of all third-party methods. Predicted probabilities of resorting to mediation and so on, increase in these circumstances (increase from .08 to .12). At the same time, when challengers have won using binding third-party methods, predicted probabilities of bilateral negotiations drop (change from .89 to .78), indicating a challenger's increased trust in third-party resolution methods.

**Table 4.** Predicted Probabilities—Attempts at Binding Third-Party Methods in Extreme Cases

| | | Target in Binding Third-Party Methods | |
|---|---|---|---|
| | | Negative Experience | Positive Experience |
| Challenger in binding third-party methods | Negative experience | .06 | .01 |
| | Positive experience | .21 | .06 |

To further tease out the effects of past win−loss record of both parties, in Table 4 we present predicted probabilities of resorting to binding third-party methods in extreme cases. Here we simultaneously account for challenger's wins and the target's losses. Consider that the challenger that has had a positive experience with binding third-party methods is more than three times more likely to propose these methods to a "loser target" versus a "winner target" (predicted probabilities .21 vs. .06). At the opposite end of the spectrum is a situation where we have a "loser challenger" and a "winner target"—here predicted probabilities are 21 times smaller (.01).

Past win−loss record also matters greatly in nonbinding third-party methods. Interestingly however, the way that losing and winning matters in these methods is unique and differs, in some sense, from patterns discussed in the context of negotiations, arbitration, and adjudication. What really matters here is the target's experience with these methods. The challenger is much more likely to propose nonbinding third-party methods to a "winner target." Nonbinding third-party methods lie between two extreme ends of a continuum: political bilateral negotiations, and highly legalized arbitration and adjudication. At the heart of mediation, conciliation, and so on lay their inability to produce by themselves a legally binding obligation, as final resolution of a dispute "will still depend upon the will of the parties to accept and act on the end results" (Von Glahn and Taulbee 2007, 25). Moreover, on a case-by-case basis, the disputants are allowed to freely choose the third parties (Shaw 2003).

There are strong theoretical reasons to believe that a challenger that proposes a nonbinding third-party method to a "winner target" does so hoping to mold the outcome of the settlement by selecting "appropriate" third parties—a third state or an international organization (IO) that will be likely to favor the challenger's claims. The challenger expects the target to agree because of the target's own positive experiences with these methods. In general, our results indicate that challenger states' perceptions concerning the third-party's role are to a large extent shaped by their past experience with these methods. In support of Hypothesis 2, our results show that the challenger's past win/loss record matters especially in binding third-party PRD methods. However, we also discover that the challenger's decisions are in all instances shaped by the target win−loss record. When making decisions regarding an appropriate PRD method, challenger states look for clues that would help them estimate the chances of victory. Examining their own and the target's past

win/loss record constitutes a very effective way to do that. These findings support the expectations in the international law literature (Gamble and Fischer 1976; Von Glahn and Taulbee 2007).

Does a state's prior positive experience with a particular third party (mediator, arbitrator, or a set of judges) lead it to use the same specific third party in future settlement attempts of the same general type, similar to the forum shopping that occurs in domestic law? To answer this question, we have taken an initial cut at identifying the actual third parties that states resort to when attempting to peacefully resolve their disputes.[24] After careful analysis of states' subsequent choices, we discovered that in general, states do not engage in forum shopping *sensu stricto*. States return to the same PRD methods but not necessarily to the same third parties after previous victories. Consider Chile, who as a target state won arbitration awarded by the United Kingdom in 1977, and then agreed to arbitration again in 1984, but this time by the Vatican in its dispute with Argentina. The only group of states whose behavior resembles that of domestic litigants are Islamic law states, especially in their attempts at third-party mediation.[25] Our data show that of the 61 mediation attempts made by Islamic law states in the Middle East, 59 percent of the time challenger states proposed an Islamic third party (other Islamic law state or an Arab organization). Typical mediators included the Arab League, the Islamic Conference Organization, the Gulf Cooperation Council, and presidents or envoys from Egypt, Syria, Kuwait, Jordan, Saudi Arabia, and Iran. At the heart of forum shopping is a belief on the part of the litigant that a particular forum will yield the most favorable judgment or verdict. To ensure the best possible outcome, Islamic law states forum shop among the possible third parties and choose one that will apply Islamic law principles to the settlement (Powell and Wiegand 2010).[26]

Results pertaining to the control variables provide interesting insights into the dynamics of peaceful resolution. With regards to the effects of value of territory, the model shows that when disputed territory has strategic value, states are more likely to seek both nonbinding and binding third-party methods, and less likely to resort to bilateral negotiations. It is logical that states quarreling over territory with strategic value would be skeptical of any voluntary compromise (Huth 1996), and therefore seek some third-party assistance in dispute resolution. However, we find that if the disputed territory has economic value, challenger states are less likely to seek binding third-party methods when compared with negotiations. This finding is consistent with the findings of Huth (1996) in that disputes over economically valuable territory are more likely to be resolved through bilateral negotiations. We discover that ethnic value of territory makes challenger states less likely to seek binding methods, which is contrary to an earlier finding by Allee and Huth (2006).

Our findings also show that states with power asymmetry prefer negotiations to binding third-party assistance. We are unable to statistically distinguish between negotiations and nonbinding third-party methods, as the coefficient for Power Asymmetry in the top set of coefficients in Table 2 is statistically insignificant. These results provide further support for patterns discovered by Allee and Huth (2006), Hensel (2001), and Simmons (1999), all of which find that recourse to

binding methods of peaceful resolution is more likely if the two states are somewhat equal in power. Hansen, Mitchell, and Nemeth (2008) further corroborate these findings, showing that international organizations are more likely to serve as third-party conflict managers in situations of power parity.

Past Conflict is statistically significant in the top set of coefficients in Table 2 and positively correlated with nonbinding methods, but insignificant with binding methods, providing mixed results about the impact of past militarized interstate disputes (MIDs). Past conflict in a dyad makes it almost twice as likely to seek nonbinding third-party methods compared to bilateral negotiations. These results are consistent with the findings of Simmons (2002) regarding the influence of past violence on states' choices to use binding processes in territorial dispute resolutions. Shared membership in peace-promoting organizations also has a substantive effect on the likelihood that two states will attempt to solve their territorial grievances using binding methods of PRD versus bilateral talks. If a dyad is part of 11 peace-promoting IOs, its likelihood of binding third-party methods is 4.5 times higher compared to when the dyad lacks shared membership in such IOs. At the same time, predicted probability of bilateral negotiations changes from .73 to .87. These findings relate well to the existing literature on territorial disputes and reveal that such membership is also influential on the choice to use binding third-party methods, arbitration, and adjudication (Hansen, Mitchell, and Nemeth 2008; Shannon 2009).

Shared alliance and joint democracy do not have a statistically significant impact on the choice of methods of PRD. Conventional wisdom is that the presence of a military alliance is a sign of trust between states, making bilateral negotiations a more likely choice of PRD than arbitration or adjudication (Allee and Huth 2006). As the literature suggests, in situations when the disputing states are military allies, their shared security interests encourage informal and low-cost bilateral negotiations. Yet our results do not support or reject this finding. Our results also differ from the democratic peace literature, which suggests that democracies are apt to engage third parties in the resolution of disputes in binding ways such as adjudication or arbitration due to their trust in legal procedures (Raymond 1994). However, our findings support patterns uncovered by Gent and Shannon (2008), Mitchell, Kadera, and Crescenzi (2008), and Shannon (2009), all of which show that democratic dyads are not more likely to resort to third-party settlement. The disparity between these findings and the arguments advanced by the democratic peace literature warrant future scholarly investigation.

## Conclusions

The purpose of this study was to understand the underlying mechanisms of attempted peaceful settlement of territorial disputes. Even when quarreling states have chosen to settle their dispute peacefully, they face choices regarding specific methods of peaceful resolution. The proliferation of international dispute resolution methods has created the possibility of strategic picking and choosing of an appropriate forum.

States can be selective about which methods they choose and to which forums they take disputes. Our theory makes clear that states make rational strategic choices when attempting to settle their territorial disputes. Through examining their past win/loss record, challenger states choose PRD methods that, according to their calculations, will be most likely to yield a favorable outcome for them. In fact, while choosing a forum, challengers use their own and the target's past record of victories and failures to identify the optimal way to settle a dispute.

Our results provide an additional dimension to patterns discovered in the literature on international dispute resolution, which show that states are biased toward certain PRD methods. For example, Powell and Mitchell (2007) argue, because the ICJ has rules and procedures that mimic those in civil law systems, not surprisingly, civil law states have been much more likely to recognize the jurisdiction of this court than common or Islamic law states. Win/loss record constitutes another source of bias that makes some PRD methods much more appealing to states than other methods, which helps to account for the desire for picking and choosing among existing forums in the international realm. Unfortunately, several practitioners of international law have repeatedly expressed their concern regarding the increasing practice of forum shopping.[27] For example, Judge Guillaume of the ICJ has numerous times spoken with apprehension about the emerging possibility of "forum shopping" that can possibly "generate unwanted confusion" and "distort the operation of justice" (Koskenniemi and Leino 2002, 554).

The existence of numerous methods through which states can attempt to settle their territorial grievances has both negative and positive influences in world politics. On the negative side, the multiplicity of PRD methods encourages states to rank forums of dispute resolution in order of being more biased toward them or their opponent. Thus, an ICJ judgment that seems to fulfill expectations of one side more than the other may automatically generate a "loser" and a "winner." This dichotomy, in turn, has a viable potential to turn into a vicious cycle where the "loser" does not come back to the court again, but tries other PRD methods in the hope of a victory. On the positive side, all methods of dispute resolution ranging from bilateral negotiations to binding adjudication can constitute effective conflict management strategies for states who view the methods with legitimacy. Thus, the greater the number of potential forums existing in the international system, the more likely states should be to resolve disputes on their own outside of court (Mitchell and Powell 2011). Additionally, the fact that winners are likely to return to the same PRD methods demonstrates the potential for further development of international law and mechanisms of dispute resolution.

## Notes

1. We consider a territorial dispute to be a disagreement between government officials of sovereign states who make official claims for territory or defend against attempts to change the territorial status quo.

2. ICJ Reports 1979, 7 and 1984, 169, respectively; ICJ Web site: http://www.icj-cij.org/docket/index.php?p1=3&p2=2 (accessed February 2010).
3. For example, international mediation resembles domestic mediation and binding international adjudication firmly relies on states' formal consent resembling the domestic court proceedings (Alvarez 2005, 530).
4. SG/SM/3525, 4, 5 (1992), also quoted in Franck 1995, 175.
5. For example, several human rights bodies composed of politicians and experts issue "views" instead of binding judgments (Alvarez 2005, 530).
6. 11 AJIL (1917).
7. ICJ Reports 1962, 6, 36-7; 56 AJIL 4, (1962); ICJ Web site: http://www.icj-cij.org/docket/index.php?p1=3&p2=2 (accessed February 2010).
8. ICJ Reports 2002; ICJ Web site: http://www.icj-cij.org/docket/index.php?p1=3&p2=2 (accessed February 2010).
9. The Greentree Agreement provided further guarantees for the treatment of Nigerians living in the territory to be transferred to Cameroon, established a follow-up committee to deal with any difficulty in implementation of the transfer of territory, and arranged for Nigerian police and local administration to remain in the territory to be transferred for a two-year transitional period (United Nations Secretary General 2006).
10. General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV), October 24, 1970.
11. There are several principles in international law that partly limit states' choice of a PRD method, such as the doctrine of *lis alibi pendens* and the *res judicata* principle. The former prohibits states "to commence another set of competing proceedings concerning the same dispute before another judicial body" (Shany 2003, 22-3). The *res judicata* principle, also known as the doctrine of finality, states that "the final judgment of a competent judicial forum is binding upon the parties" and therefore cannot be relitigated (Shany 2003, 22-3). These two rules, however, do not limit states' aptitude to carefully and strategically "pick and choose" from among available PRD methods before making a final decision about which PRD method they should resort.
12. ICJ Reports 2002; ICJ Web site: http://www.icj-cij.org/docket/index.php?p1=3&p2=2 (accessed February 2010).
13. ICJ Reports 2002; ICJ Web site: http://www.icj-cij.org/docket/index.php?p1=3&p2=2 (accessed February 2010).
14. The challenger state is the state that initiates the territorial claim against the target state, which maintains sovereignty or occupation of the disputed territory. The objective of the challenger state is to change the status quo through a territorial exchange, while the target state wishes to maintain the status quo.
15. The target state, analogous to the defendant in a domestic legal system, may respond to the challenger state's decision by either accepting the proposal of a forum or requesting a different method. There are numerous ways through which a target state can defy the challenger's choice of a PRD method. The target may simply refuse to participate in

bilateral negotiations, question the challenger's choice of a third party, or challenge the jurisdiction of an international adjudicative body.

16. Negotiations that do not attempt to settle the dispute instead deal with related issues but not sovereignty. For example, several negotiations between Argentina and the United Kingdom regarding the Falkland/Malvinas Islands dispute have dealt with hydrocarbon exploitation, joint exercises of troops in sea rescue operations in the South Atlantic, and shared attempts to halt poaching by Asian fishing vessels without licenses, among other issues.
17. Huth and Allee (2002) code all bilateral negotiations that were attempted by challenger states.
18. We do not solely rely on the Issue Correlates of War (ICOW) project data for two reasons. First, it does not yet include territorial disputes outside of the Western Hemisphere, Europe, and the Middle East, and second, it does not reflect attempts, but instead codes actual resolution methods that occurred. It also does not reflect whether the challenger or target initiated the PRD method.
19. Just days after the dispute was resolved, both states acknowledged that the ICJ decision was effectual and allowed for joint economic development, primarily joint oil exploration ventures (Wiegand 2010a).
20. We combined past win/loss record with arbitration and adjudication into one category—binding third-party methods—because in our data there are very few past wins within each of these categories.
21. Otherwise, for all states with no wins and no losses, the value indicating their win−loss record would be missing (the denominator would be 0).
22. We initially used a Heckman selection model using all territorial disputes from 1945 to 2003. The dependent variable in the first stage was peaceful settlement attempt, and in the second stage, the chosen PRD method. When we estimated the model, $\rho$ was statistically insignificant, indicating that the selection process and the outcome process are independent of each other.
23. We gathered data on mediation and arbitration from the same sources listed in the research design.
24. Islamic law is based primarily on religious principles of human conduct (Glenn 2007). Examples of states representing this legal tradition include Libya, Iraq, Iran, Kuwait, and Qatar (Powell and Mitchell 2007; Powell and Wiegand 2010).
25. Consider that, ''the preferred 'third party' in the Arab-Islamic approach is an unbiased insider with ongoing connections to the major disputants as well as a strong sense of the common good and standing within the community'' (Irani and Funk 1998, 63).
26. The way that the term ''forum shopping'' is used in this context refers to the ''picking and choosing'' among settlement techniques or different courts.

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