Designing Third Party Dispute Settlement for International Organizations*

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Why is supranational dispute settlement rare? This paper examines variation in third-party dispute settlement in 72 international organizations since 1950. We observe the co-evolution of three distinct types, each of which follows a distinct causal logic. Supranational dispute settlement is facilitated when IOs are general-purpose and geographically limited, and where its members have intensive trade links and relatively equal power. State-controlled dispute settlement dominates in the UN and its specialized agencies, but it can also take root beyond—in IOs that have a democratic core membership and lack an overpowering hegemon. Notwithstanding marked legalization over the past six decades four out of ten IOs in our dataset had no or weak third party dispute settlement in 2010. These IOs tend to be collectivities of have-nots: they lack political community, democracy, balanced power, UN family membership, and trade links.

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What motivates third-party international adjudication in international organization? What factors lead an international organization to establish a strong dispute settlement mechanism? At the turn of the century several scholars noted the rise of international legalization—"the decision in different issue-areas to impose international legal constraints on governments" (Goldstein et al. 2000: 386; Abbott and Snidal 1998, 2000; Abbott et al. 2000; Merrills 2011). The most institutionalized form of legalization consists of third-party tribunals that apply legal principles to resolve disputes arising from international cooperation. Keohane, Moravcsik and Slaughter (2000:457) observe that "international courts and tribunals are flourishing," and quote Romano (1999: 709) who identifies "the expansion of the international judiciary as the single most important development of the post-Cold War age." Posner and Yoo (2005: 11) concur that "international tribunals have become more powerful as a matter of formal law over time. Compulsory jurisdiction has become more common, and the judiciaries have become more independent of the states that establish them." Alter (2011: 388) charts the rapid growth of international permanent courts, from six in 1985 to 25 in 2009, and of binding legal rulings, with ninety percent passed since the end of the Cold War.

The flipside of legal empowerment is diversification, or at the very least, persistent variation. Posner and Yoo (2005: 11) comment that "international tribunals have become more diverse, specialized, and, in a sense, fractionalized. Contrary to some expectations, the world has not moved toward a single judicial system comparable to a domestic hierarchical judiciary. Instead, jurisdiction is parceled out to coequal institutions, with no higher appellate authority to resolve jurisdictional conflicts." Keohane et al. (2000) identify two types of legal dispute resolution, interstate and transnational, and Alter (2011) observes a shift over time from the former to the latter. Others register variation along a single

dimension from low to high legalism in dispute settlement in regional trade regimes (McCall Smith 2000), regional economic organizations (Haftel and Thompson 2006; Haftel 2012), trade agreements (Jo and Namgung 2012), and human rights (Simmons 2009).

International adjudication is a form of delegation—a conditional grant of authority to an independent non-state body to propose or impose a resolution for disputes arising from interstate cooperation. International adjudication, then, gives teeth to authoritative international organization. Why and when do states accept international adjudication? What motivates the diversity in outcomes?

This paper takes up this question with a new dataset, created by the authors, on international adjudication in the international organizations with standing in world politics. Under international adjudication we understand the extent to which member states resort to legally binding third party adjudication to resolve disputes and enforce compliance to the terms of an IO contract. Our measure of dispute settlement taps annual variation in six features of adjudication through third-party bodies in 72 international organizations (Appendix I). The data register the evolution from 1950 to 2010.

We begin by drawing out expectations from a growing literature on dispute settlement. Next, we introduce three distinct ways of conceiving the dependent variable, and explain our conceptualization as a qualitative choice between ideal-types: no legalized third-party dispute settlement, a state-controlled system, and a supranational court. We then set out a model that explains variation in IO dispute settlement as response to the policy problem, interdependence, community, power asymmetry, and democracy.

Context of Legalization

International adjudication is primarily a postwar development (Posner and Yoo 2005).[1] Preliminary steps were taken in 1899, when the Permanent Court of Arbitration was established in The Hague. It was not a genuine standing tribunal, rather a permanent service for the selection of ad hoc arbitrators in interstate disputes and, since 1935, mixed state-nonstate disputes (Crawford 2007: 1). The Permanent Court was never much used, and by the early 1920s, "like Sleeping Beauty, it fell into a deep slumber" (Guillaume 2007: 2; see also Posner and Yoo 2005).[2] In 1922 the Permanent Court of International Justice (PCIJ) was created under the wing of the League of Nations. It was the first standing tribunal in the international realm, and it heard sixty cases before its replacement by the International Court of Justice (ICJ). Aside from the Bank of International Settlements, which created a permanent tribunal in 1930 to settle war reparations, and an optional in-house arbitration mechanism in the International Telecommunications Union (1932), no other major IO adopted third-party dispute settlement.

The literature identifies two waves in the development of international adjudication since 1945. The first one began with the creation of the International Court of Justice in 1945. While its predecessor, the PCIJ, was primarily advisory, the ICJ's jurisdiction is predominantly compulsory. The ICJ is also the default permanent tribunal for many international organizations in the United Nations family, and some beyond. It has thus become the lynchpin in an emergent international legal system. The system provides wide loopholes for states to escape international adjudication: the requirement that states

[1] The roots of modern international *arbitration*—the reliance by states on ad hoc, neutral third party to resolve a particular dispute—can be traced to the Jay Treaty of 1795. See Treaty of Amity, Commerce, and Navigation, Nov. 19, 1794, U.S.-Gr. Brit., 8 Stat. 115. For a discussion of the Jay Treaty, see John Yoo (1999).

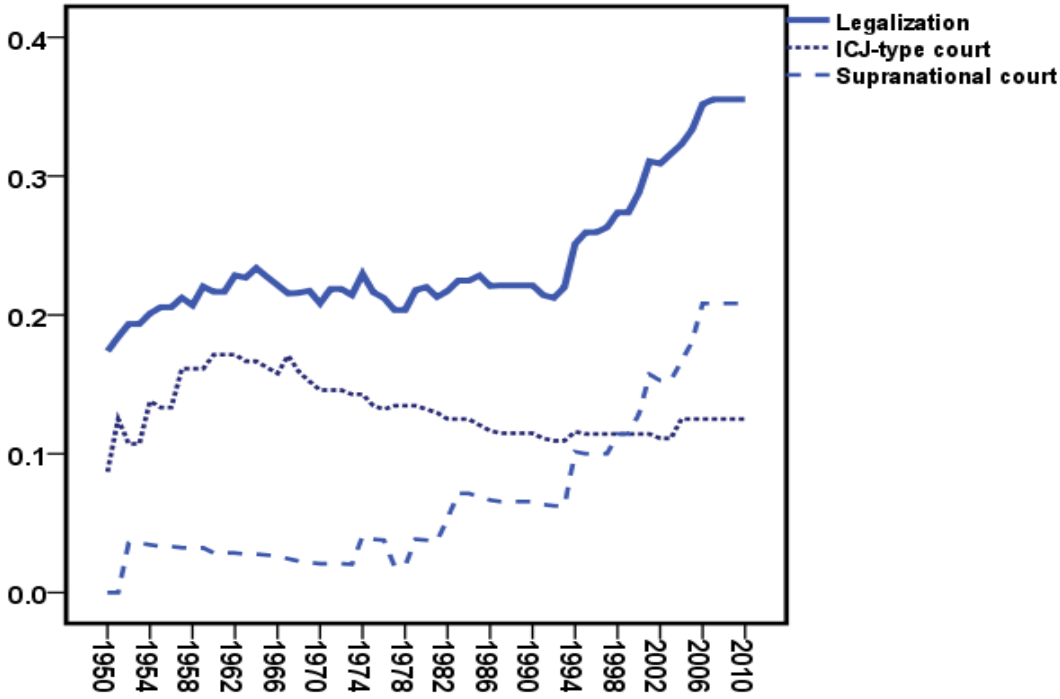
[2] In the last few decades it has gained a new leash by extending its arbitration services to private parties.

consent *ex ante* to binding adjudication; limitations on nonstate access to dispute settlement; the lack of remedy if a state refuses to comply with a judgment.

A second ratcheting-up of dispute settlement is often dated to the early 1990s, when several IOs set up courts with enforcement capabilities and nonstate access (Alter 2006: 23). They joined the European Union (since 1952) and the Andean Community (since 1983) which had been the lone international organizations with comprehensive legalization.

Figure 1 illustrates this two-stage development among the 72 IOs in our dataset. Over a sixty-year period, average legalization remained level until the 1990s, and then increased sharply. Legalization among existing major international organizations is 66 percent higher in the first decade of the 21st century compared to the 1950s. The ICJ model, understood here as characterized by automatic third party access to a standing tribunal whose decisions are conditionally binding, was never preeminent. As the number of international organizations grew from 23 in 1950 to 48 in 1970, 61 in 1990, and 72 in 2010, the ICJ model lost prominence and in 2010 just 12.5 percent (or nine) of international organizations conformed to the ICJ model. The rise in legalization is driven by the proliferation of courts that combine compulsory jurisdiction with one or more supranational levers: enforcement, access for private litigants, preliminary ruling. They grow from just one in 1952 to fifteen by 2010.

Figure 1: The evolution of legalization in IO dispute settlement



Note: Legalization ranges from 0 to 1 (see appendix).

Conceptualizing Legalization

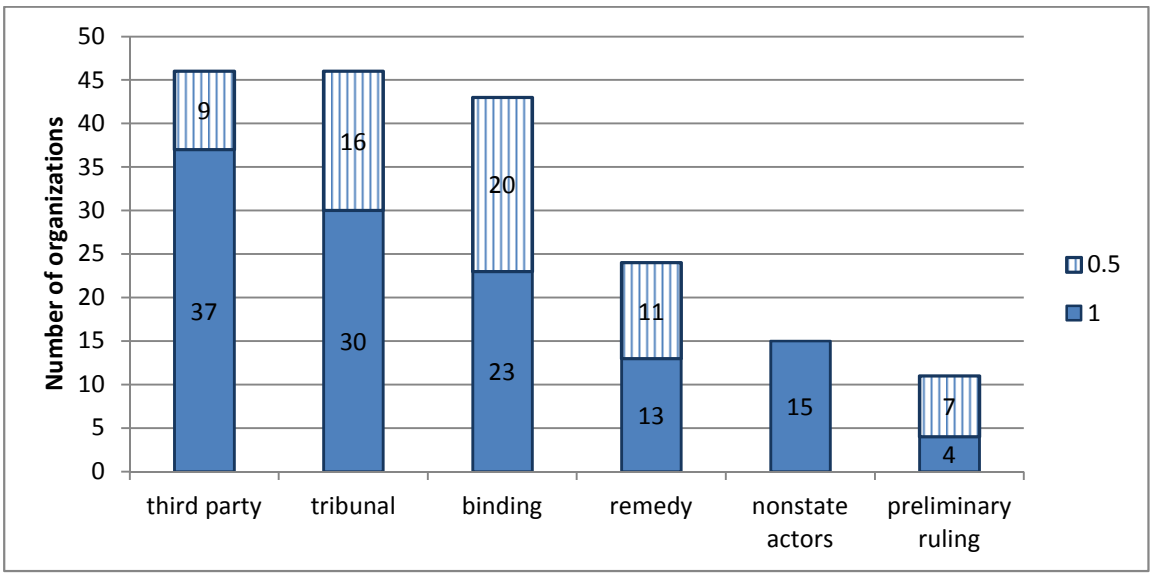
Dispute settlement encompasses a wide range of legal institutions (Merrills 2011). Third-party dispute settlement is at the highest end of legalization. From the perspective of states, there are serious benefits and costs: it can provide states with information about motivations and compliance and thus facilitate diffuse reciprocity among compliant parties, but it can also impose reputational costs on noncompliant members, and when judgments are binding and enforceable, it can constrain sovereignty (Kono 2007).

Our measure builds on the framework developed for regional trade organizations by McCall Smith (2000), which ranks dispute settlement from low to high legalism along five dimensions: a) automatic third party access; b) nature of the tribunal; c) bindingness of the ruling; d) nonstate access, and e) enforcement. We refine this schema by adding a sixth

dimension, preliminary ruling. And we apply the schema not only to trade organizations but also to a wide range of non-trade regional and global organizations. Five components are measured trichotomously; nonstate access is dichotomous. Appendix II details the measurement and explains how we adjudicate cases in the gray zone.

Figure 2 displays, for 2010, the number of international organizations that meet these criteria. The first column indicates that 37 international organizations provide dispute settlement with a right to automatic third party review, and in nine IOs third-party review requires prior political consent by a government, an intergovernmental IO body, or both. The next column indicates that 30 international organizations have a standing tribunal while in 16 IOs panel judges are chosen ad hoc.

Figure 2: International organizations and dimensions of dispute settlement for 2010



Note: automatic third party access (yes=1, mediated by political body=0.5, no=0); nature of tribunal (standing=1, ad hoc=0.5, none=0); bindingness of the ruling (yes=1, conditional or partial=0.5, no=0); nonstate access (yes=1, none or limited to state or IO bodies=0); enforcement (direct effect=1, partial such as retaliatory sanctions=0.5, no means=0); preliminary ruling (compulsory for some national courts=1, non-compulsory=0.5, none=0). N=72.

There are several ways to aggregate these components. We begin with principal component analysis, and go on to show how a Mokken scale and cluster analysis illuminate some interesting and fundamental properties that escape uni-dimensional aggregation.

Principal component analysis

There are strong reasons for expecting the components of dispute settlement to constitute a single factor. These items were designed to capture, in McCall Smith's words, low to high legalism. To the extent that dispute settlement mechanisms impose international legal constraints on governments they contribute to supranationalism in the international organizations that host or use them (Alter 2001, 2011; Helfer and Slaughter 1997; Keohane et al. 2000).

Since we are interested in identifying patterns in dispute settlement we choose principal component analysis. For the year 2010, the analysis produces a single factor with an eigenvalue of 4.02 (table 1). The rotated factor loadings range between 0.66 and 0.92. This single-factor solution, however, is not robust over time. In most other years the analysis produces a two-factor solution, whereby the first factor explains most of the variation and strengthens over time. It has high factor loadings for right to third party review, standing tribunal and binding judgment. The second factor has high factor loadings for access to non-state actors, preliminary ruling, and with varying strengths, remedy—or the authority to penalize non-compliance. Thus at the start of our dataset two dimensions best describe dispute settlement, which by the 21st century converge into a single dimension. Thus a substantial proportion of variance remains unexplained if dispute settlement is conceptualized as a single dimension.

Table 1: Principal component analysis of dispute settlement

Components	1970		1990		2010
	Factor 1	Factor 2	Factor 1	Factor 2	Factor 1
Third party access	0.91	-	0.94	-	0.87
Tribunal	0.92	-	0.92	-	0.87
Binding ruling	0.88	-	0.89	-	0.92
Remedy	-	0.71	0.56	0.49	0.82
Nonstate access	-	0.82	-	0.83	0.74
Preliminary ruling	-	0.93	-	0.89	0.66
Eigenvalue	3.24	1.46	3.55	1.17	4.02
Explained variance	0.54	0.24	0.59	0.19	0.67

Note: Principal component analysis, n = 3206 (IO scores for 1950-2010). The table shows the rotated varimax solution with factor loadings lower than (–)0.4 suppressed.

Guttman scale

Legalization follows a sequence from 'easy' to 'difficult steps.' Figure 2 reveals that the items are not evenly distributed. Whereas 46 organizations provide third-party review of disputes, only 11 organizations allow for some preliminary ruling. The other items fall in-between. This observation is not novel: McCall Smith noted that "features tend to cluster, suggesting a hierarchical ordering" in the following order: third-party review, bindingness, standing tribunal, nonstate access, and (less consistently) remedy. Kono (2007) and Jo and Namgung (2012) confirm the cumulative nature of legal dispute settlement.

A Mokken scale examines the extent to which the data are hierarchical. Do they form a Guttman scale (Doyle, Kowalczyk, McGee, & Conroy 2011)? A scale is Guttman-perfect when a positive response on a difficult item always yields a positive response on a less difficult item (van Schuur 2003). For example, when an organization allows for nonstate access it will also make binding rulings, have a standing tribunal, and automatic third party review. If IOs have a positive response on a difficult item but not on a less difficult item this is a Guttman error, and the Loevinger's H-statistic refers to the proportion of observations

that avoids a Guttman error. An H-index above 0.5 indicates that the scale is strongly Guttman (Mokken, 1970; Mokken & Lewis, 1982).

In 2010, 81 percent of the observations are Guttman conform (Table 2). The scale is strong, and the components can be considered to form a hierarchy. The ordering departs somewhat from McCall Smith's, but more importantly, there is a wide distance between the first three 'easy' and the last three more demanding features—remedy, nonstate access, and preliminary ruling. This hierarchy has crystallized over time (Table 3). Dispute settlement meets the criterion for a strong Guttman scale (H>0.6) in every decade, but coherence increases from decade to decade. That is to say, it is increasingly rare for an IO to take a difficult step without taking the easier steps as well, and where IOs reform dispute settlement, they conform more closely to the Guttman logic. Benelux illustrates the dynamic. Until 1974, dispute mechanism in the three-country IO was limited to third party review, an ad hoc tribunal, conditionally binding judgments, and partial remedy. A 1974 reform upgraded the tribunal to permanent and binding judgments. The Court now meets the first three 'easy' steps in full, and has taken some of the more difficult steps: partial remedy, and optional preliminary ruling. The changes in Benelux dispute settlement have inserted "a supranational element . . . into an organization with a highly intergovernmental character" (Wouters and Vidal 2008: 14). As legalization has deepened and proliferated to more international organizations, the route to supranationalism has come to resemble a single track.

Table 2: Mokken scale analysis for 2010

Item	Mean score	Observed Guttman errors	Expected Guttman errors	Loevinger coefficient	H z-statistic
Automatic third party review	0.58	6	41.3	0.86	12.06
Standing tribunal	0.53	13	46.7	0.72	11.99
Binding ruling	0.46	10	46.4	0.78	12.98
Remedy	0.26	5	36.3	0.86	11.02
Nonstate access	0.21	6	39.7	0.85	9.99
Preliminary ruling	0.10	2	13.4	0.85	8.69
Scale		**21**	**111.9**	**0.81**	**18.52**

Note: N=72.

Table 3: Mokken scale analysis over time

	1950s	1960s	1970s	1980s	1990s	2000s	All decades
				Mean score			
Automatic third party review	0.36	0.42	0.41	0.41	0.45	0.55	0.45
Standing tribunal	0.38	0.43	0.39	0.39	0.41	0.50	0.43
Binding ruling	0.28	0.27	0.27	0.28	0.30	0.41	0.32
Remedy	0.04	0.07	0.10	0.13	0.16	0.24	0.15
Nonstate access	0.06	0.05	0.04	0.05	0.09	0.17	0.09
Preliminary ruling	0.03	0.03	0.03	0.03	0.04	0.09	0.05
Loevinger-H for the scale	0.79	0.72	0.69	0.75	0.77	0.83	0.78
Average number of IOs	28	38	50	58	67	72	53

Note: N=3204

Cluster analysis

Legalized dispute settlement can also be conceived as configurational because the features cluster to form a limited number of types. This reflects a stream of international legal scholarship which makes a sharp distinction between interstate or state-controlled dispute settlement on the one hand and supranational or transnational courts on the other (Alter 2011, 2012; Helfer and Slaughter 1997; Keohane et al. 2000). These types follow fundamentally different logics. Interstate dispute resolution is based on the principle that *states* are the subjects in international law. Supranational dispute settlement, by contrast,

starts from the notion that international law binds *nonstate* actors as well as their governments.

Governments are the gatekeepers in state-controlled dispute settlement. While this form of international dispute settlement may allow third-party access, employ an arbitration system or a standing tribunal, or binding judgments, governments maintain ultimate control by mediating or prohibiting access to nonstate actors and by monopolizing implementation of international rulings.

Supranational dispute settlement perforates government control. Direct links between courts and domestic societies embed international rules in domestic legal and political processes (Helfer and Slaughter 1997: 287; Keohane et al. 2000). This is the essence of supranationalism: law becomes supranational when it can "penetrate the surface of the state" (Helfer and Slaughter 1997: 288). This can be achieved through several mechanisms, chief among which are a) preliminary ruling, which allows or compels domestic courts to seek legal guidance from the international court on potential conflicts between domestic and international law; b) nonstate access, which enables private interests to initiate proceedings against a state; and c) direct effect, which binds domestic institutions to enforce international rulings (Alter 2011).

K-means cluster analysis tests whether cases fall into these hypothesized types.[3] We confirm three clusters, which correspond to the conjectures set out above. The largest cluster (48 percent of the IO-year observations) consists of IOs with no or weak legalized dispute settlement. The median legalization score for this cluster is zero, and scores range

[3] We choose specifications that allow for unequal cluster size, and relax the default assumption of Euclidian distance, which is better suited for continuous variables (Ahlquist and Breuning 2012). Our theoretical priors guide the choice of the starting point for iterative fitting; we therefore initiate the procedure with the distribution of IOs over the items "remedy" or "binding." The results are robust across varying starting points, as well as across k-means (binary or continuous), and k-means and k-median analysis. In the causal analysis we use the clusters produced by k-median analysis as dependent variable.

between zero and 0.25. The size of this cluster is striking because the population analyzed here consists of the world's most authoritative international organizations. Interestingly, the odds of an IO having legalized dispute settlement are just about as high as the odds of an international agreement having dispute resolution drawn from a random sample (Koremenos 2007). The second cluster (46 percent) contains IOs with limited legalized dispute settlement. Scores on legalization range between 0.25 and 0.65, and the median is 0.42. Finally, six percent of the IO-year observations fall in the third cluster, which has a median legalization score of 0.91 and scores range from 0.67 to 1. For 2010 the respective percentages are 39, 44 and 17 percent.

Table 4 contrasts configurations in the latter two clusters for 2010. IOs in the state-controlled type have automatic third-party review, a tribunal, and partial or fully binding commitment, but each leaves one or more doors ajar for national governments intent on retaining sovereignty. The simplest escape route is to have conditionally binding rules. In many global organizations, opt-outs or derogations from particular commitments are legion. The International Court of Justice, created as the auxiliary dispute settlement court for the United Nations, represents the ideal-type. Where bindingness is conceded, states keep ultimate control by avoiding effective remedy (direct effect) and nonstate access.

IOs in the bottom half of the table approach the supranational ideal-type. Each accepts unconditional bindingness and resorts to one or more mechanisms that enable international courts to "penetrate the surface of the state." The door to statehood sovereignty, ever ajar in state-controlled DS, begins to close, and in eight IOs it is shut. These IOs combine full remedy, nonstate access, and preliminary ruling. The EU's European Court of Justice has long been the standard bearer, and in recent years it has been joined by the

courts of the Andean Community, COMESA, CEMAC, CARICOM, SICA, SADC[4] and the East African Community.[5]

Cluster analysis supports the intuition that legalized dispute settlement in international organizations is a three-way choice between alternative designs: no legalized dispute settlement, state-controlled dispute settlement, and supranational dispute settlement. What determines the selection of one over the other? We turn to this question in the following section.

[4] The supranational status of the Southern African Development Community (SADC) Tribunal was short-lived. It started work in November 2005, but was suspended in August 2010 after a contentious court ruling on land claims in Zimbabwe. In August 2012 the Summit resolved that "a new Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States." Individuals will no longer be able to access the court (Hulse and van der Vleuten 2013).

[5] Cluster placement for Mercosur and the African Union is not robust. Under the conditions exerted in Table 2, Mercosur falls in the second cluster (1, 0.5, 0, 1), and the African Union (1, 0, 1, 0) in the third cluster.

Table 4: State-controlled vs. supranational dispute settlement in 2010

State-controlled dispute settlement

Binding ruling	Remedy	Nonstate Access	Preliminary ruling	Average legalization	
0.5	0	0	0	0.35	CERN, IAEA, IMO, ITU, ICC, WIPO, ESA, FAO, IOM,OSCE, UN, UNESCO, WMO, WHO
0.5	0.5	0	0	0.43	ASEAN, OTIF, OAS, ILO, NAFTA
0.5	0	1	0	0.58	BIS, ISA
1	0	0	0	0.46	ICAO, UPU
1	0.5	0	0	0.53	EFTA, OAPEC, OECS, SAARC, PIF, WTO
1	0	0	0.5	0.58	CIS
1	0.5	0	0.5	0.67	Benelux

Supranational dispute settlement

Binding ruling	Remedy	Nonstate access	Preliminary ruling	Average legalization	
1	1	1	1	1.00	COMESA, CEMAC, EUROPEAN UNION
1	1	1	0.5	0.92	ANDEAN, CARICOM, SICA, EAC, SADC
1	1	1	0	0.83	COUNCIL OF EUROPE, ECOWAS, EEA

Theorizing Types of Dispute Settlement

Noting that half of the international agreements in her random sample lack dispute settlement, Barbara Koremenos (2007: 190) ponders: "which half needs explaining depends on where one is sitting. The standard realist perspective tells us that the dispute resolution provisions . . . are simply cheap talk. So the puzzle is why states bother putting such provisions in half of their agreements. From the standard international law perspective, it is surprising that only half of the agreements have these provisions."

We refine the question to shed light on a three-way choice between no legalized dispute settlement, state-controlled dispute settlement and a supranational court. Paraphrasing Koremenos, we suspect that realists, institutionalists or constructivists find at least one of these outcomes puzzling. Our approach is to take an inclusive view of the factors that are anticipated to have leverage over the choice of legal dispute settlement.

Scale and function

The most compelling functional rationale for government above the state relates to the anticipated benefits of scale for peace and prosperity (Marks 2012). We explore two lines of thinking that build on this idea.

Structure of the cooperation problem. The core premise of functionalism is that the design of international institutions depends on the nature of the cooperation problem that the institution is trying to solve (Brousseau et al. 2012; Keohane 1982; Koremenos 2005; Sandler 1997; Zürn 1992). Dispute settlement is less critical in coordination scenarios where the main challenge is informational. There may be a need for a secretariat with authority to collect and

disseminate information or to craft focal points, but the presumption is that coordination agreements are self-enforcing. Dispute settlement is more critical for collaboration problems where defection has higher payoffs than cooperation when others cooperate (Hasenclever, Mayer, Rittberger 1997; Sandler 2004; Zürn 1992). Legal dispute settlement can be useful to expose free-riding and, if judgments are binding and enforceable, penalize non-compliance. Koremenos (2007) generalizes the argument by hypothesizing that complex cooperation, that is, problems characterized by uncertainty, incentives to defect, and time inconsistency, induce international institutions to adopt formal dispute settlement. In short, the type of issues an IO deals with affects its choice of dispute settlement.

We derive the following hypotheses. First, IOs dealing with a collaboration problem such as trade, where shirking is likely, require stronger legal dispute settlement than IOs coordinating conventions or common standards. To the extent that function determines form, trade regimes should be most likely to have a supranational court. The World Trade Organization is interesting in this respect. Despite the fact that it puts high store on consensus and member state control in political decision making, it has an elaborate dispute settlement machinery with automatic third party review, standing tribunal, binding judgments, and a retaliatory sanctioning regime. Between its inception in 1995 and March 2011, 439 complaints were filed (Tallberg and McCall Smith 2012).

Coordination-oriented IOs should have no or relatively weak legal dispute settlement, as in the Universal Postal Union (UPU), created in 1874 to maintain common rules for

international mail services (Codding 1964).[6] The UPU is the primary forum for coordination between postal sector players, and provides advisory, mediating and liaison services. It now also offers technical assistance to postal services in the developing world. The arbitration procedure is run by and for state parties. Governments choose arbitrators; if they cannot agree on an arbitrator, the International Bureau may invite a third postal administration to settle the matter, but under all circumstances does the final decision remain under government control. The dispute settlement mechanism was not upgraded when the UPU became a UN special agency in 1964.

Like trade organizations, collective security systems[7] embody collaboration problems (Stein 1983; Snidal 1985; Hasenclever et al. 1997). However, reneging on security commitments is different from cheating on trade. Disputes on security commitments go to the heart of national sovereignty; they involve the identity of a political community, its citizens' lives, and perhaps its survival. It seems frivolous to suggest litigation to make a NATO country put its citizens in harm's way for the club. Dispute settlement can be functional, but it is likely to be intergovernmental: "[w]hen the security stakes of an international dispute are high, state leaders should be unwilling to allow a third party to make decisions that could adversely affect their country's security interests" (Allee and Huth 2006: 228). Consistent with this, Koremenos (2007) finds that only twenty percent of security agreements have some dispute settlement

[6] International commerce, interdependence, and coordination gaps motivated the creation of UPU. Before its creation postal relations between states were governed by ad hoc bilateral agreements. "Because there was no general co-ordination or overarching agreement about how to handle international mail, a single letter had to satisfy a conflicting maze of demands in each of the jurisdictions through which it passed. Mail might take a bewildering variety of routes from sender to recipient, each of which carried a different postal rate that was divided in a multitude of fashions between the State of origin, transit States and State of destination" (Rebecca Bratspies 2006).

[7] IOs designed to build confidence and trust among their members—internal security—or IOs designed to pool resources to defend the club against third parties—external security.

against 50 and 55 percent for environmental and human rights agreements respectively, and most of these are diplomatic. Security exposes the limits of legal dispute settlement as a means for resolving collaboration problems. Adjudication is dispositive, that is, litigation is a good way to dispose of a troublesome issue if one does not care too intensely about the outcome. "When the result is all-important, adjudication is unlikely to be used because it is simply too risky" (Merrills 2011: 291).

> *H1: Dispute settlement depends on function. IOs dealing with a collaboration problem (e.g. trade) tend to have legalized dispute settlement. Security organizations are an exception.*

Trade is a dichotomous variable that takes on the value of 1 if an IO's core activity concerns trade. IOs that support a free trade agreement, a customs union, economic union, or an economic and monetary union are categorized as trade organizations. *Security* is a dichotomous variable that takes on the value of 1 if an IO's core activity is a military alliance, a security community, a mutual non-aggression pact, or political-diplomatic collaboration.[8]

Economic interdependence. A second functional explanation of legalized dispute settlement relates to the level of economic interdependence. This has its base in neofunctionalist thinking, which maintains that cross-border economic exchange demands regulation by a centralized authority (Caporaso 1998; Mattli 1999). Stone Sweet and Brunell (1998: 63) argue that transnational exchange generates a social demand for transnational third-party dispute resolution because "as exchange proceeds over the life of the contract, or as external circumstances change, the meanings attached to the same set of rules by the

[8] An IO's core activity is determined from a list of 25 policies (team coding).

contractants may diverge." The main function of third party dispute resolution is to sustain trade over time by "providing a measure of certainty to each contractant and means of reconsecrating the terms of the contract over time (1998: 64)."

> *H2: The greater the trade interdependence among IO members the greater the pressure for legalized dispute settlement.*

We employ a measure that estimates the importance of intra-IO trade to non-IO trade. *Trade interdependence* S_i is the proportion of an IO *i*'s intra-IO trade t_{ii} (exports plus imports) of the IO members' total trade $t_{i.}$ so that $S_i = t_{ii}/t_{i.}$[9] Intra-IO trade has the virtue of being responsive to dynamics of scale (intra-IO trade shares tend to increase as an IO's scale grows) and intensity (for a given scale, intra-IO trade share increases as trade among members intensifies). The link is hypothesized for international organizations designed to regulate economic transactions among a subset of countries, i.e. regional trade organizations.

Community

Norms—the mental maps that underpin values—are viewed as affecting international institutional design (Acharya 2004; Duina 2006; Hooghe, Marks, de Vries 2006; Katzenstein 2005; Keohane and Ostrom 1995). They derive from the proposition that conflicting norms make states less willing to shift authority to third parties.[10]

[9] The index ranges between 0 and 1. Bilateral trade data and data for some regional trade organizations are regularly published by international organizations; the most comprehensive series (since 1970) is downloadable at http://www.cris.unu.edu/riks/web/data (see Iapadre and Plummer 2011: 102-105 for a discussion).

[10] Scholars emphasizing the functionality of institutions for reducing transactions sometimes make the opposite argument. Thus Stone Sweet and Brunell (1998: 64) write that "[T]ransactions are particularly high in situations in which strangers—those who do not share a common normative framework (whether cultural or legal) – contemplate exchange and no effective triadic dispute resolution exists."

The most sustained argument for community as source of governance is Karl Deutsch's transactionalist theory (1953 [1966]). For Deutsch, the basis of community is communication across economic, social, cultural, and political fields. Communication is helped to the extent that interactions across these fields reinforce; it is hindered to the extent they crosscut. There is an affinity with the economic interdependence argument discussed above because for Deutsch too interdependence undergirds demand for government, but with two basic differences.

First, community is sustained by the multi-faceted nature of communication across spheres of life—not merely trade. Second, Deutsch highlights the uneven clustering of communication and thus community across space, and posits that government must therefore be clustered too: "the inner source of political power—the relatively coherent and stable structure of memories, habits and values—depends on existing facilities for social communication, both from the past to the present and between contemporaries . . . But such facilities are, however, unevenly distributed" (Deutsch 1953 [1966]: 75). For these reasons, Deutsch anticipates government above the state to be scarce: ". . . for the near future the growth of [regional blocks] seems more probable than that of any major institutions of world government. All such blocks will be characterized by uneven internal structures based on underlying cluster patterns of settlement, capital, natural resources, and facilities for social communication. The expansion of all such blocks will be subject therefore to very real geographic and social limitations (Deutsch 1953: 192-3)."

Powers & Goertz (2011) and Hooghe & Marks (2003, 2009a) build on the Deutschian argument. Powers & Goertz propose that the world is in the process of dividing itself into regions "based on the creation of multifunctional, multipurpose regional economic institutions

to deal with a variety of economic, social and political problems." Spillover from formal institutions is central in sustaining regional economic institutions, but they also write that the authority of a regional organization "is in large part a function of the strength, stability, and political homogeneity of the member states (2011: 2388)." Hooghe & Marks conceptualize Type I or general-purpose governance as jurisdictions that "bundle together multiple functions, including a range of policy responsibilities, and in many instances, a court system and representative institutions. . . . Type I jurisdictions express people's identities with a particular community (2010: 17, 27)." They expect transnational general-purpose government to be unusual because community above the state is thin.

To our knowledge, this argument has not been directly applied to international dispute settlement, but the implications are transparent. Supranational courts should be a) rare, and b) concentrated in IOs resembling a Deutschian political community that bundles institutional, geographical and socio-political ties.

> *H3: IOs governing a Deutschian political community are more likely to have supranational dispute settlement.*

Regional IO is a dichotomous variable that distinguishes IOs (and years) that meet minimal criteria for a transnational political community. Our first cut at operationalizing this is to adopt Powers and Goertz's list of regional economic institutions, which are hypothesized to be plausible candidates for polity building (Powers and Goertz 2011: 2401, updated by the authors).[11]

[11] An alternative community argument, not tested here, highlights legal traditions. One hypothesis is that legal diversity dampens legalized dispute settlement. Merrills (2011: 134) notes that "[U]nless the distribution of seats on the [International] Court [of Justice] is seen to reflect the balance and diversity of the international community

Domestic politics

There is broad agreement that international design is influenced by domestic politics (Hooghe and Marks 2009b; Rixen and Zangl 2012; Tallberg et al. forthcoming; Zürn et al. 2012). International dispute settlement should be no exception (Kono 2007; Jo and Namgung 2012; McCall Smith 2000; Moravcsik 2000). We build on work that argues for the causal power of political regime type, and in particular the level of democracy.

Democracy is perceived to facilitate international cooperation and supranationalism on the grounds that, since Kant and the Enlightenment, international norms have been central to the liberal political project. Democracies can make more credible commitments because democratic checks on executive power and more transparent decision making make cheating more costly. Moreover, as Kahler (1992, 2000) argues, precise norms, binding provisions, and litigation are more in line with the practice of liberal democratic states than autocratic regimes.

One study that systematically tests the effect of democracy on dispute settlement concludes that democracies are more likely than autocracies to embrace medium-level dispute settlement, but not supranational courts (Jo and Namgung 2012). The argument invokes domestic incentives. Democratic governments balance countervailing pressures from import-competing industries, which prefer low-level dispute settlement, and export-competing sectors,

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as a whole, it is likely that states which consider their culture to be inadequately represented will not regard the Court as an appropriate body to handle their legal disputes." International tribunals often use one of two means to accommodate diversity (Merrills 2011: 292). They ensure representation of the "main forms of civilization and the principal legal systems of the world" on the bench, as in the International Court of Justice (art. 9, Statute) or the International Criminal Court (art. 36 (8), Rome Statute). Or they allow states to select judges or arbitrators, through a collective political body, as in the World Trade Organization, or individually, as in the Permanent Court of Arbitration or in many functional international organizations. A second hypothesis posits that legal traditions frame preferences on supranationalism (Duina 2011). Francesco Duina argues that civil-law regimes have greater affinity with supranationalism. Common law predisposes to limited codification or harmonization and ad hoc panels of arbitrators, while civil law predisposes to interventionist agreements intent on harmonization and equipped with a permanent court.

which prefer supranational rules. Autocracies are less subject to countervailing pressures. In this view, the legalization effect of democracy hits a ceiling: unless export-competing industries hold sway, the default option for democracies is state-controlled dispute settlement.

Jo and Namgung's argument is tailored to trade agreements, and may underestimate the effect of democratic norms on international cooperation. Studying the choice of settlement for interstate territorial and communal disputes, Allee and Huth (2006: 226) conclude that "[D]emocratic leaders are more likely than nondemocratic leaders to seek settlement of international disputes through legal mechanisms" because the rulings of third-party legal bodies can be used strategically by politically vulnerable executives to justify their actions.

Recently democratized states may be interested in joining a supranational IO to ''lock in'' and consolidate democratic institutions at home (Pevehouse 2005). Andrew Moravcsik (2000) argues that formerly Communist systems embraced the supranationalization of the European Court of Human Rights to demonstrate their commitment to democracy and the rule of law. Beth Simmons (2009: 25ff) argues that "democracies are the natural allies of human rights" and shows a close association between the spread of democracy across the world and the development of an international human rights regime, which is given teeth by international courts with authority to adjudicate. Mobilization by domestic pro-democracy forces may also pressure governments to commit to international legalization. Alter observes (2011: 407) that several of the most recently empowered supranational courts are *not* economic courts but human rights or good governance courts. The ECOWAS Court, the courts of the South African Development Community and of the East African Community have used "good governance" provisions as a tool to promote democracy and human rights, and domestic democratic

mobilization appears to have motivated some courts. Alter (2011: 408) notes that "the prospects for Africa's regional courts depend to a large extent on whether democracy and the rule of law can better establish themselves in African member states," hypothesizing a direct link between democracy and supranational adjudication.

> *H4: The higher the level of democracy among IO members, the stronger the pressure for legalized dispute settlement.*

Democracy is calculated as the mean of the polity IV scores of all members of each international organization with high values indicating high levels of democracy.

Power

Realism expects that power asymmetry among the members of an international organization decreases the likelihood of strong dispute settlement. Great powers oppose binding formal rules in situations of interstate conflict because third-party dispute settlement levels the playing field. The more powerful state has a preference for bilateral negotiations, because the disparity in power establishes a situation in which the stronger side has considerable bargaining leverage over the weaker party (Stone 2010). Moreover, while judges do not make laws, strong dispute settlement bodies can set precedents that constrain state authority over time (Kono 2007; on the European Court of Justice, see Alter 2001; Burley Slaughter & Mattli 1993; Helfer and Slaughter 1997; Stone Sweet & Brunell 1998; on the Andean Court, see Alter & Helfer 2010; on the European Court of Human Rights, see Hawkins & Jacoby 2008). This argument has found consistent empirical support (Koremenos 2007; McCall Smith 2000).

The institutionalist counterargument is that hegemonic powers may have reasons to endorse legalized dispute settlement. Abbott and Snidal (1998) suggest that powerful states may be reluctant to delegate and pool authority, but value binding and precise rules provided their loss in bargaining power is offset by lower long-term bargaining costs. Martin (1992) observes that the rule of law is sometimes the cheapest way for hegemons to get others to comply. McCall Smith and Tallberg (2012) argue that the type of legal dispute settlement matters. Legal dispute settlement whereby an independent secretariat or body can take member states to court (closer to the supranational type) is best equipped to level the playing field, while legal dispute settlement that limits access to states leaves the door ajar for power politics.

> *H5a: The greater the predominance of one member state, the lower the likelihood of legalized dispute settlement.*
> *H5b: The effect may not be linear: power asymmetry acts as a strong constraint on supranational courts, but not on state-controlled courts.*

Power asymmetry is operationalized as the ratio of the material capabilities of the most powerful member state to those of other members. We use the Composite Index of National Material Capabilities (CINC) version 4.0 which summarizes military expenditure, military personnel, energy consumption, iron and steel production, urban population, and total population (Singer et al. 1972, 1987).

Diffusion

Diffusion is sometimes defined restrictively to refer to uncoordinated dissemination of an idea, institution, or policy through learning, emulation, or competition (Elkins and Simmons 2005:

35), and sometimes to encompass coordination by a group of states, a hegemonic power, or an international organization through coercion or seduction (Börzel and Risse 2012; Lenz 2012; Simmons, Dobbin, Garrett 2006).

The most longstanding script is the UN model of dispute settlement with the International Court of Justice, which was created in the expectation that it would grow into the premier international dispute body. Clearly not all IOs are equally receptive to the ICJ script. We expect that international organizations that are formal members of the UN family have the strongest incentives to adopt or emulate the UN ICJ model. *UN family* adopts a value of 1 for an IO for years that it is a recognized Special Agency of the United Nations (coding from UN website).

> *H6: International organizations that are formal members of the UN family are more likely to adopt or emulate the UN ICJ model.*

From the early 1990s the European Union has invested heavily in regional organizations.[12] Transfer of EU institutions or practices is rarely an explicit goal, but a means to promote trade, development, security, or good governance (Van Hüllen and Börzel 2013; de Lombaerde and Schulz 2009; Pietrangeli 2009; Télo 2007). Capacity building of regional secretariats often takes a central place in the EU's regional indicative programs, which channel development aid to regional organizations and their members. The 8th (1995-2000) and 9th (2002-2007) Regional Indicative Programs for the Southern African Development Community

[12] EU support to regional integration can be traced back to the 1969 Second Yaounde Convention which gave preference to regional and multi-country initiatives among African, Caribbean and Pacific (ACP) countries. In 1974, the Council of Ministers passed a "resolution on regional integration among developing countries" that authorized the European Union to "respond favorably" to aid requests from countries undertaking regional cooperation. But it was not until the 1992 Lisbon Summit that this policy became extended beyond ACP to Latin America, the Magreb, and Central and Eastern Europe (Pietrangeli 2009: 10-11). These steps coincided with efforts by the United Nations to involve regional organizations in security management (Tavares and Schulz 2006: 237).

allocate €15.6 and €12.5 million respectively "to support the capacity of the SADC Secretariat to drive and coordinate the regional integration agenda as outlined in the SADC Regional Indicative Strategic Development Plan." In the 10th program (2008-2013) €20 million is set aside for "regional infrastructural development" to strengthen the SADC secretariat's statistics collection, monitoring capacity, and human resources (European Community 2008).[13] Two-thirds of the budget of the African Commission, the executive arm of the African Union, is provided by international donors, and the lion's share comes from the European Union (Leininger 2013). EU influence on dispute settlement is less direct. While Karen Alter (2012: 135) counts "eleven operational copies of the European Court of Justice (ECJ)," case studies suggest that most courts came about because the domestic legal community turned to Europe as inspiration for a more effective transnational design and not as a result of active EU intervention (Alter 2011; Alter et al. 2012; Hulse and van der Vleuten 2013). Still, some EU regional indicative programs set aside money to finance capacity building for courts.[14] *EU funding* takes a value of 1 for an IO for years that EU financial support amounts to more than 10 percent of the total annual budget of an organization, and 0 when it makes up less than 10 percent. EU funding is coded zero before 1990.

> *H7: Regional organizations that receive substantial funding from the European Union are more likely to adopt or emulate an ECJ-style court.*

[13] See SADC Regional Indicative Program (2008) p. 34, and Annexes p. 35, 44. The document contains a detailed 28-page long reform plan for upgrading the SADC secretariat and its ancillary institutions, with a paragraph devoted to the SADC Tribunal (Annex 18: SADC Secretariat Development Capacity Framework).

[14] Hulse and van der Vleuten (2013) report that the EU donated €215,000 towards the SADC Tribunal budget under the 9th Regional Integration Capacity Building Project. This was used to finance seminars for judges, a training program for the Registrar, and procurement of law reports.

Method

There are sound theoretical reasons to expect the three types of dispute settlement to be driven by different causalities. This motivates our choice for multinomial logit, which relaxes the assumption that the relationship between any two pairs of outcome groups is the same (proportional odds assumption).[15]

Autocorrelation. One strategy is to address autocorrelation is through year dummies (Beck and Katz 1997; Beck, Katz, and Tucker 1998). The other is to employ decennial readings instead of annual readings (Clark and Linzer 2012). This is appropriate given that reforms of dispute settlement are rare events which are usually the product of multi-annual negotiations.[16]

Unit effects. A second issue with time-series data is accounting for differences across panels. The two most commonly used methods are fixed and random effects, but as Clark and Linzer (2012) suggest, the Hausman test is "neither a necessary nor a sufficient metric." The best decision is driven by considerations about the amount of data and the underlying level of correlation between the unit effects and regressor. When the covariate is sluggish (as in this study) and the number of units or observations is small, a random effects model is preferable.[17]

[15] Omodel and Brant tests, which examine whether coefficients differ between models for each pair of outcome groups, are significant. This reinforces our choice for mlogit over ordered logit.
[16] Results are robust across these methods. Table 5 reports decennial data.
[17] Table 5 and 6 report the most commonly used statistics, including McFadden, Nagelkerke, Cox & Snell, and in particular Lacy's R^2o, which outperforms other measures under some conditions (Lacy 2006). We also report the percentage of observations that is correctly predicted (Herron 1999), Wald's $\chi 2$, which examines whether the coefficients in the model (excepting the intercept) are jointly zero, and Akaike's information criterion (AIC), which allows comparison across the models.

Time. To alleviate endogeneity concerns we impose a one-year lag on the independent variables, except for type of IO (Security, Trade) and UN family. The results are robust across different temporal lags.

Explaining Types of Dispute Settlement

At the start of the time series in 1950 no supranational court existed; by 2010 twelve fall in this cluster. What features set this select group apart? Table 5 reports pairwise comparisons between supranational and weak dispute settlement, and between supranational and state-controlled dispute settlement. Model 1 and Model 4 provide the baseline estimation with all variables of theoretical interest for each pair-wise comparison. All hypotheses find confirmation except for the functionalist expectation that trade IOs should be more inclined to adopt a supranational court, but this result is an artifact of multicollinearity.[18] Model 2 and Model 5, where *Regional IO* is dropped to address multicollinearity, show that *Trade* is significant at the 0.01 level.[19] Model 7 contrasts state-controlled dispute settlement with weak dispute settlement.[20]

[Table 5 about here]

[18] There is considerable overlap between regional IOs and trade IOs, but they do not coincide. The core activity of the World Trade Organization or the World Customs Union is trade regulation, but neither is an example of "multipurpose regional economic institutions" (Powers and Goertz 2011: 2388) or "general-purpose organizations that bundle competencies for territorial communities" (Hooghe and Marks 2009b: 234-5). Conversely, the Intergovernmental Authority on Development (IGAD) and the South Asian Association for Regional Cooperation (SAARC) are regional IOs but not trade organizations. IGAD is a development organization which invests heavily in security. SAARC has been mostly engaged in building trust between longtime enemies Pakistan and India, and has only recently concluded a free trade agreement.

[19] The correlation between *Trade* and *Regional IO* (R=0.64) is high, though the model does not suffer from severe multicollinearity: the variance inflation scores indicate that the standard errors of the model are reliable (VIF < 2.5).

[20] In order to ascertain the robustness of our results we have also run the model separately for each year. In the earlier decades the results differ or the model does not converge. This can likely be attributed to the limited number of IOs, missing data (trade interdependence) or the absence of certain factors (EU influence). From the 1990s we observe broadly consistent results.

What sets these three types of dispute settlement apart? First, power asymmetry acts as a brake on legalized dispute settlement, but more decidedly on supranational (Models 1-6) than state-controlled (Model 7) dispute settlement. Power asymmetry captures the predominance of a single hegemon. If power is understood as the diversity in power capabilities among IO members (measured as standard deviation; not reported), the odds for an IO having a supranational court increase but the difference is no longer significant. Power diversity does not whet states' appetite to set up legalized dispute settlement –whether state-controlled or supranational— but it also does not block it; power asymmetry, on the other hand, throttles supranational dispute settlement.

Second, without minimal democracy, legalized dispute settlement is difficult to set up. Democracy strongly motivates state-controlled (Model 7) as well as supranational dispute settlement (Model 1-3), but it does not reliably differentiate between one and the other type (Model 4-6). There is much here that is consistent with the Kantian view that democratization facilitates internationalization, but with a twist: democracies may be more tolerant of international law, but remain reluctant to accept supranational law.

Third, IOs whose core activity is security are not compatible with supranational dispute settlement. However, state-controlled dispute settlement is not incompatible with security organizations. The International Atomic Energy Agency and the Organization for Security and Cooperation in Europe, for example, have state-controlled dispute settlement.

Fourth, trade links motivate legalized dispute settlement. The odds of an IO having supranational versus weak or state-controlled dispute settlement increase by 111 percent and 67 percent respectively for a one standard deviation increase in intra-IO trade.

Table 5: Explaining types of dispute settlement (DS)

	Supranational vs. weak DS			Supranational vs. state-controlled DS			State-controlled vs. weak DS
	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**	**Model 7**
Trade IO	1.011	2.978***	–	0.860	2.413***	–	0.151
	(1.237)	(0.856)		(1.069)	(0.666)		(0.663)
Security IO	–14.000***	–13.490***	–16.300***	–13.020***	–12.630***	–15.270***	–0.982
	(1.450)	(0.868)	(1.041)	(1.506)	(1.014)	(1.169)	(1.081)
Trade interdependence	0.088***	0.075*	0.091***	0.056***	0.046**	0.058***	0.032
	(0.033)	(0.040)	(0.032)	(0.0169)	(0.023)	(0.017)	(0.029)
Regional IO	3.313**	–	4.006***	2.413**	–	3.009***	0.900
	(1.374)		(1.071)	(1.127)		(0.816)	(0.743)
Democracy	0.243**	0.241**	0.239**	0.119	0.135	0.115	0.123**
	(0.105)	(0.110)	(0.102)	(0.110)	(0.120)	(0.108)	(0.062)
Power asymmetry	–8.673***	–7.642***	–8.315***	–6.558**	–6.138**	–6.182**	–2.115*
	(2.999)	(2.393)	(2.576)	(3.014)	(2.398)	(2.599)	(1.246)
UN family	–10.420***	–12.080***	–11.960***	–13.700***	–15.310***	–15.230***	3.277***
	(1.064)	(1.174)	(1.029)	(0.737)	(0.917)	(0.708)	(0.922)
EU funding	2.897**	3.798***	2.844**	2.929***	3.583***	2.882***	–0.031
	(1.258)	(1.166)	(1.188)	(0.985)	(1.020)	(0.932)	(0.891)
Constant	–6.702***	–6.717***	–6.494***	–4.805***	–4.908***	–4.606***	–1.897*
	(1.499)	(1.412)	(1.399)	(1.437)	(1.486)	(1.374)	(1.040)
Decennial data	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	342	342	342	342	342	342	342
AIC	1.229	1.245	1.220	1.229	1.245	1.220	1.229
Wald χ2	3053.71	1983.41	1959.59	3053.71	1983.41	1959.59	3053.71
Probability > χ2	0.000	0.000	0.000	0.000	0.000	0.000	0.000
McFadden's R^2	0.371	0.355	0.369	0.371	0.355	0.369	0.371
Cox-Snell R^2	0.484	0.470	0.483	0.484	0.470	0.483	0.484
Nagelkerke R^2	0.582	0.564	0.580	0.582	0.564	0.580	0.582
Lacy's R^2o	0.397	0.381	0.397	0.397	0.381	0.397	0.397

Note: *** p<0.01, ** p<0.05, * p<0.1; cluster-corrected standard errors (by IO) in all models.

Fifth, we find support for diffusion. UN family membership predisposes IOs to have state-controlled dispute settlement. And regional IOs dependent on EU funding are more likely to choose supranational settlement, though the causal effect is not robust across all model specifications (not shown).

Finally, *Regional IO* is strongly and powerfully associated with supranational courts. All but three IOs with supranational courts in 2010 are regional IOs according to the Powers-Goertz definition; the exceptions are the Council of Europe, the European Economic Area and the African Union. The odds of an IO having supranational rather than weak DS are 27 times (2748 percent) higher if the IO is a regional IO, and the odds of it having supranational rather than state-controlled DS are 11 times (1117 percent) higher. Of the remaining 13 regional IOs, eight have state-controlled dispute settlement and five have weak (or no) dispute settlement, so *Regional IO* does not differentiate between state-controlled and weak dispute settlement.

Our intuition is that states can be convinced to swallow supranational dispute settlement if they are members of a transnational institutional framework geared to tackle problems for a community of fate. The categorization of IOs proposed by Powers and Goertz (2011) conveys congruence in institutional and policy goals, geographical contiguity and socio-political ties. Hooghe and Marks (2009a; 2003: 240, 237) conceptualize these as general-purpose (or Type I) jurisdictions, created to handle a range of tasks for a community with relatively durable boundaries. "Type I jurisdictions are usually based on encompassing communities . . .[T]he jurisdiction satisfies a preference for collective self-government, a good that is independent of citizens' preferences for efficiency or for any particular policy output. Type I jurisdictions are often rooted in identity. . . . Correspondingly, Type I governance is

oriented to voice, rather than to exit." For that purpose they "tend to adopt *trias politicas* structure of an elected legislature, an executive (with a professional civil service), and a court system." Hence the contract underlying these arrangements is broad and incomplete, and the motivations for durable collaboration are not easily reduced to instrumental interest but tap community.

[Table 6 about here]

Table 6 substitutes *Regional IO* for two factors that operationalize Type I governance: the nature of the contract underlying the cooperation agreement, and the existence of historical ties among the founding members. Table 6 reports on how these factors shed light on supranational vs. state-controlled dispute settlement, but the results are similar (and stronger) for the pairwise contrast between supranational and weak dispute settlement.

Contract expresses the extent to which an organization's foundational treaty is incomplete. Narrow contracts are restricted to issue-specific technical or economic cooperation; intermediate contracts may cover diverse issue areas, but involve only member states; broad contracts engage a wide range of issues areas and have a societal element that promises deep cooperation or union of peoples. The conceptualization was developed by Gary Marks, Tobias Lenz and Besir Ceka (2013) for regional organizations and is extended here to all 72 international organizations.[21] In Model 9, the odds of an IO having supranational rather than state-controlled dispute settlement increase by 389 percent for one unit increase in contract.

Historical ties captures shared political history prior to the creation of the international organization. It takes the value of 1 when an IO meets one or more of the following criteria: a)

[21] The categorization is based on coding key words in the foundational treaties.

the IO encompasses a region with a longstanding pan-regional movement advocating political unity in the region; b) the IO's founding members have a shared history of colonialism; c) the IO's founding members were units in a common polity (Marks et al 2013). Model 10 shows that IOs with prior political ties are significantly more likely to have a supranational court. For one unit increase in historical ties, the odds of being supranational relative to state controlled increase by 632 percent and relative to weak by 750 percent. The effect of historical ties is remarkable given its distance from the dependent variable.

More research is needed to tease out what kind of common experiences provide fertile ground for future supranational cooperation. Preliminary analysis suggests that it may be less cultural commonalities—e.g. religion, language, civilizational heritage—or mass societal ties—e.g. transnational calls—than common political norms and practices—political regime (democracies or autocracies), public institutions, or legal traditions. One needs refined, multifaceted data at elite as well as societal level to test Karl Deutsch's speculation that "the growth of [regional blocks] . . . will be characterized by uneven internal structures based on underlying cluster patterns of settlement, capital, natural resources, and facilities for social communication" (Deutsch 1953: 192-3).[22]

[22] Constituent polities tend to co-habit the same geographical region, espouse similar geo-political interests (as e.g. illustrated by UN voting affinity), have similar political regimes, and trade more intensively with each other than with the rest of the world.

Table 6: Alternative measures of political community (state-controlled vs. supranational DS)

	Model 8	Model 9	Model 10	Model 11	Model 12	Model 13
Trade IO	1.541	2.788**	2.730***	2.283	2.786	4.051*
	(1.153)	(1.202)	(0.930)	(1.672)	(1.721)	(2.183)
Security IO	–12.784***	–11.047***	–11.830***	–12.331***	–10.234***	–10.789***
	(1.317)	(1.247)	(1.124)	(1.810)	(1.660)	(1.931)
Democracy	0.226**	0.240**	0.219**	0.186**	0.282**	0.218***
	(0.108)	(0.120)	(0.103)	(0.091)	(0.127)	(0.084)
Power asymmetry	–8.793***	–-8.785*	–7.751**	–10.304**	–14.155***	–12.904**
	(3.393)	(4.578)	(3.365)	(4.303)	(4.119)	(5.856)
UN family	–16.028***	–14.682***	–16.870***	–15.630***	–15.150***	–17.034***
	(0.699)	(1.029)	(0.851)	(1.156)	(1.942)	(1.875)
EU funding	2.737***	2.622***	2.375***	2.267***	2.263***	1.312
	(.954)	(0.907)	(0.792)	(0.762)	(0.743)	(0.873)
Regional IO	2.490**	–	–	2.295**	–	–
	(1.240)			(1.052)		
Contract	–	1.359**	–	–	2.045**	–
		(0.568)			(0.801)	
Historical ties	–	–	1.843*	–	–	2.635**
			(0.948)			(1.097)
Political delegation	–	–	–	0.803*	1.235***	1.186**
				(0.412)	(0.366)	(0.545)
Constant	–4.582***	–7.832***	–5.488***	–6.694***	–12.632***	–8.970***
	(1.609)	(2.584)	(1.823)	(2.232)	(3.624)	(2.608)
Decennial data	Yes	Yes	Yes	Yes	Yes	Yes
Observations	360	360	360	359	359	359
AIC	1.277	1.246	1.276	1.242	1.195	1.222
Wald χ2	1444.91	1345.88	1259.26	847.21	979.11	791.47
Probability > χ2	0.00	0.00	0.00	0.00	0.00	0.00
McFadden's R^2	0.33	0.35	0.33	0.36	0.39	0.37
Cox-Snell R^2	0.45	0.47	0.45	0.47	0.50	0.48
Nagelkerke R^2	0.54	0.56	0.54	0.57	0.60	0.58
Lacy's R^2o	0.36	0.37	0.36	0.38	0.41	0.39

Note: *** p<0.01, ** p<0.05, * p<0.1; cluster-corrected standard errors in all models

If incomplete contracting and common experiences give states reason and will to accept international authority, supranational dispute settlement should be part of a broader delegation of authority. In the final three models, we introduce a measure of *Political delegation*, the extent to which member states delegate authority across nine decision areas to an independent IO general secretariat.[23] There is a striking elective affinity between delegating authority to third-party secretariats and delegating authority to supranational courts. The level of political delegation is almost twice as high in IOs with supranational dispute settlement. The most prominent exception is the Council of Europe, which has a weak general secretariat and yet one of the most authoritative supranational courts. However, it has other levers for political delegation: an authoritative assembly, nonstate representatives in various consultative bodies, and since 1999 an independent Commissioner of Human Rights with substantial executive powers (Bond 2012). Within its primary remit—human rights—the Council of Europe is a supranational body.

Predictive power. Table 7 compares predicted and actual values for each observation using the baseline multinominial models in Table 5 (Models 1, 4 and 7). One should be cautious in interpreting this table: since the clusters vary in size, the goodness of fit is driven by the distribution of the data as well as by the predictive power of the model. Still, the model does a remarkable job at allocating IOs in the right types, with 76.5 percent correctly predicted.

[23] For conceptualization and operationalization, see Hooghe and Marks (2013) and Hooghe et al. (forthcoming).

Table 7: Classification table of multinomial logit (full model)

Actual number of observations per type	**Predicted number of observations per type**			
	Weak DS	State-controlled DS	Supranational DS	*Total*
Weak DS	**142**	15	2	159
State-controlled DS	51	**104**	5	160
Supranational DS	2	5	**15**	22
Total	195	124	22	**341**

Robustness. Results do not change under bootstrapping and jack-knifing,[24] and are not sensitive to particular observations. Excluding the European Union, the Council of Europe, or NAFTA, for example, does not alter results significantly. Finally, a conservative model which includes both year-dummies and decennial observations does not change the substantive conclusions.

Conclusion

This paper sets out to explain the remarkable diversity of authoritative international adjudication over the past six decades. We use a new dataset that charts how third party dispute settlement in 72 international organizations has evolved since 1950.

We identify two starkly different types. State-controlled dispute settlement is based on the principle that states are the subjects in international law. State-controlled dispute settlement may allow states automatic third-party access, employ an arbitration system or a standing tribunal, and rulings may even be binding, but it also leaves one or several doors ajar for governments to claw back sovereignty, by keeping control over who initiates or implements

[24] Using subsets of available data (jackknifing) or drawing randomly with replacement from a set of data points (bootstrapping) produces estimates of the precision of coefficients.

rulings in government hands. Supranational dispute settlement, by contrast, starts from the principle that international law binds nonstate actors as well as their governments. Direct links between courts and domestic societies undermine government control, which happens when nonstate actors can initiate litigation, national courts may or must ask for a preliminary ruling, or court judgments have direct effect. Over the past six decades there has been an absolute and relative increase in the number of IOs with state-controlled or supranational dispute settlement, and the growth has been steepest in the supranational type. Hence we concur with reports of legalization in the international arena—at least with respect to the world's most consequential international organizations.

Several factors influence the odds of third-party dispute settlement. First, without some minimal democracy among IO members, third-party dispute settlement is unlikely. Second, the strongest dispute settlement is found in clubs where members trade intensely with one another. And third, power asymmetry acts as a significant brake on dispute settlement.

But the most important finding is that each type of dispute settlement follows a distinct causal logic. States choose from a three-option menu, and their choices are largely driven by the type of IO that they inhabit.

Supranational dispute settlement is most likely in general-purpose, geographically limited (i.e. regional) IOs where members have intensive trade links and relatively equal power. These IOs tend to invest in strong general secretariats and other forms of political delegation, and they do not specialize in security. These are IOs with the ambition to become, in one way or another, political communities.

State-controlled dispute settlement dominates in the UN and its specialized agencies, but it can also take root beyond—in IOs that have a democratic core among their membership and lack an overpowering hegemon.

Notwithstanding the general trend to legalization, 40 percent of the IOs examined here had weak or no dispute settlement in 2010. These IOs are primarily collectivities of have-nots: they lack community, democracy, balanced power, UN family membership, and trade links. For those anticipating the emergence of a transnational legal order there is a long way to travel.

REFERENCES

Abbott, Kenneth W. and Duncan Snidal. 1998. "Why States Act Through Formal International Organizations." *International Organization* 42, no. 1: 3-32.

Abbott, Kenneth W. and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54, no. 3: 421-56.

Abbott, Kenneth, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54, no. 3: 401-19.

Acharya, Amitav. 2004. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism." *International Organization* 58, no. 2: 239-75.

Agresti, Alan. 2002. *Categorical Data Analysis, Second Edition*. Hoboken, New Jersey: John Wiley & Sons, Inc.

Ahlquist, John S. and Christian Breunig. 2012. "Model-Based Clustering and Typologies in the Social Sciences." *Political Analysis* 20, no. 1: 92-112.

Allee, Todd L. and Paul K. Huth. 2006. "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover." *American Political Science Review* 100, no. 2: 219-34.

Alter, Karen J. 2001. *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe.* Oxford: OUP.

Alter, Karen J. 2006. "Private Litigants and the New International Courts." *Comparative Political Studies* 39, no. 1: 22-49.

Alter, Karen J. 2011. "The Evolving International Judiciary." *Annual Review of Law and Social Science* 7: 387-415.

Alter, Karen J. 2012. "Global Spread of European-Style International Courts." *West European Politics* 35, no. 10: 135-54.

Alter, Karen J. and Laurence R. Helfer. 2010. "Nature or Nurture? Judicial Lawmaking in the European Court of Justice and the Andean Tribunal of Justice." *International Organization* 64, no. 4: 563-592.

Alter, Karen J., Laurence Helfer, and Jacqueline McAllister. 2011. “A New International Human Rights Court for West Africa: The Court of Justice for the Economic Community of West African States.” *American Society of International Law: Research Forum*, Los Angeles, CA.

Alter, Karen J., Laurence Helfer, and Osvaldo Saldias. 2012. “Transplanting the European Court of Justice: The Founding of the Andean Tribunal of Justice.”, *American Journal of Comparative Law*, 60:3.

Beck, Nathaniel, and Jonathan N. Katz. 1997. “The Analysis of Binary Time-Series-Cross-Section Data and/or The Democratic Peace.” Paper presented at the Annual Meeting of the Political Methodology Group, Columbus, OH.

Beck, Nathaniel, Jonathan N. Katz and Richard Tucker. 1998. “Taking Time Seriously: Time-Series-Cross-Section Analysis with a Binary Dependent Variable.” *American Journal of Political Science* 42, no. 4: 1260-1288.

Betz, Nathaniel E., & R.E. Fassinger. 2011. “Methodologies in Counseling Psychology.” In E. M. Altmaier & J.-I. C. Hansen (eds.), *The Oxford Handbook of Counseling Psychology*. Oxford: Oxford University Press, 250-xxx.

Brousseau, Erik, Tom Dedeurwaerdere, Pierre-André Jouvet, and Marc Willinger, ed. 2012. “Introduction.” In Erik Brousseau, Tom Dedeurwaerdere, Pierre-André Jouvet, and Marc Willinger (eds). *Global Environmental Commons: Analytical and Political Challenges in Building Governance Mechanisms*. Oxford: Oxford University Press, 2-28.

Bond, Martyn. 2012. *The Council of Europe: Structure, History and Issues in European Politics*. London: Routledge.

Bratspies, Rebecca. 2006. “Universal Postal Union,” *Max Planck Encyclopedia of Public International Law*, accessed online Feb 2013.

Börzel, Tanja and Thomas Risse. 2012. “From Europeanization to Diffusion.” *West European Politics* 35, no. 1: 1-19.

Burley-Slaughter, Annemarie and Walter Mattli. 1993. “Europe before the Court: A Political Theory of Legal Integration.” *International Organization* 47, no. 1: 41-76.

Caporaso, James. 1998. “Regional Integration Theory: Understanding our Past and Anticipating our Future.” *Journal of European Public Policy* 5, no. 1: 1-16.

Clark, Tom and Drew Linzer. 2012. “Should I Use Fixed or Random Effects?” University of South Carolina: unpublished paper.

Crawford, James. 2007. “The Permanent Court of Arbitration and Mixed Arbitration.” Remarks of Professor James Crawford SC FBA LLD, University of Cambridge and Matrix Chambers on the occasion of a Celebration of the Centenary of the PCA, The Hague, 18 October 2007.

Codding, George Arthur. 1964. *The Universal Postal Union: Coordinator of the International Mails.* New York: New York University Press.

Commission of the European Community. 2008. *Southern African Region: Regional Strategy Paper and Regional Indicative Program 2008-2013.* Brussels: Commission, 243pp.

De Lombaerde, Philippe, and Michael Schulz eds. 2009. *The EU and World Regionalism: The Makeability of Regions in the 21st Century*. London: Ashgate.

Deutsch, Karl W. 1953 [1966]. *Nationalism and Social Communication: An Inquiry in the Foundations of Nationality.* Cambridge, Mass: MIT Press.

Doyle, Frank, Aleksandra Kowalczyk, Hannah McGee, Ronan Conroy. 2011. “Exhaustion, Depression and Hopelessness in Cardiac Patients: A Unidimensional Hierarchy of Symptoms Revealed by Mokken Scaling.” *Irish Journal of Psychological Medicine,* 28, no. 1: 29-31.

Duina, Francesco. 2006. *The Social Construction of Free Trade: The European Union, NAFTA, and Mercosur.* Princeton, N.J.: Princeton University Press.

Duina, Francesco. 2011. “The EU as Provider of Frames and Scripts: Evidence on Law and Courts from Europe, Africa, Asia, and the Americas.” Paper presented at the biennial European Union Studies Association Conference, Boston, April.

Elkins, Zachary and Beth Simmons. 2005. “On Waves, Clusters, and Diffusion: A Conceptual Framework.” *Annals*, AAPSS, 598, 33-51.

Guillaume, Gilbert. 2007. “The Contribution of the Permanent Court of Arbitration and its International Bureau to Arbitration Between States.” Remarks by Member of the Permanent Court of Arbitration, Former President of the International Court of Justice (2007), on the l. 2002occasion of a Celebration of the Centenary of the PCA, The Hague, 18 October 2007.

Goldstein, Judith, Miles Kahler, Robert O. Keohane, Anne-Marie Slaughter. 2000. “Legalization and World Politics.” *International Organization* 54, no. 3: 385-99.

Haftel, Yoram Z., and Alexander Thompson. 2006. “The Independence of International Organizations: Concept and Applications.” *Journal of Conflict Resolution* 50, no. 2: 253-75.

Haftel, Yoram Z. 2012. *Regional Economic Institutions and Conflict Mitigation: Design, Implementation, and the Promise of Peace*. Ann Arbor: University of Michigan Press.

Hasenclever, Andreas, Peter Mayer, and Volker Rittberger. 1997. *Theories of International Regimes.* Cambridge: CUP.

Hawkins, Darren, and Wade Jacoby. 2008. "Agent permeability, principal delegation and the European Court of Human Rights." *The Review of International Organizations* 3, no.1: 1-28.

Helfer, Laurence, and Anne-Marie Slaughter. 1997. “Toward a Theory of Effective Supranational Adjudication,” *The Yale Law Journal* 107, no. 2: 273-391.

Herron, Michael. C. 2002. “Postestimation Uncertainty in Limited Dependent Variable Models.” *Political Analysis* 8, no. 1: 83-98.

Hooghe, Liesbet and Gary Marks. 2003. “Unraveling the Central State, But How? Types of Multi-Level Governance.” *American Political Science Review* 97, no. 2: 233-43.

Hooghe, Liesbet and Gary Marks. 2009a. “Efficiency and the Territorial Structure of Government.” *Annual Review of Political Science* 12(May): 225-41.

Hooghe, Liesbet and Gary Marks. 2009b. “A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus.” *British Journal of Political Science* 39, no. 1: 1-23.

Hooghe, Liesbet and Gary Marks. 2010. “Types of Multilevel Governance.” In Hendrik Enderlein, Sonja Wälti, and Michael Zürn, eds., *Handbook on Multilevel Governance*. Cheltenham, Edward Elgar: 17-31.

Hooghe, Liesbet and Gary Marks. 2013. “Delegation and Pooling in International Organization.” University of North Carolina at Chapel Hill, unpublished paper.

Hooghe, Liesbet, Gary Marks, Tobias Lenz, Jeanine Bezuijen, Besir Ceka, Svet Derderyan. Forthcoming. *Governance above the State*. Unpublished ms.

Hooghe, Liesbet, Gary Marks, and Catherine de Vries. 2006. “Patterns of "Patterns of International Organization,” Paper presented at the APSA.

Hulse, Merran and Anna van der Vleuten. 2013. “Governance Transfer by SADC: Scaling Up, Rolling Back.” Paper presented at the International Studies Association, San Francisco.

Iapadre, Lelio and Michael Plummer. 2011. “Statistical Measures of Regional Trade Integration.” In Philippe de Lombaerde, Renato G. Flores, P. Lelio Iapadre, and Michael Schulz eds. *The Regional Integration Manual*. London: Routledge: 98-123.

Jo, Hyeran, and Hyun Namgung. 2012. “Dispute Settlement Mechanisms in Preferential Trade Agreements: Democracy, Boilerplates, and the Multilateral Trade Regime.” *Journal of Conflict Resolution* 56, no. 6: 1041-68.

Kahler, Miles. 1992. “Multilateralism with Small and Large Numbers.” *International Organization* 46, no. 3: 681-708.

Kahler, Miles. 2000. “Conclusion: The Causes and Consequences of Legalization.” *International Organization* 54, no. 3: 661–83.

Katzenstein, Peter. 2005. *A World of Regions: Asia and Europe in the American Imperium.* Ithaca, N.Y.: Cornell University Press.

Keohane, Robert O. 1982. “The Demand for International Regimes.” *International Organization* 36, no. 2: 325-55.

Keohane, Robert O. and Elinor Ostrom, eds. 1995. *Local Commons and Global Interdependence.* New York, N.Y.: Sage Publications.

Keohane, Robert O, Andrew Moravcsik, Annemarie Slaughter. 2000. “Legalized Dispute Resolution: Interstate and Transnational.” *International Organization* 54, no. 3: 457–88.

Kono, Daniel Y. 2007. “Making Anarchy Work: International Legal Institutions and Trade Cooperation,” *Journal of Politics* 69, no.3: 746-59.

Koremenos, Barbara. 2007. “If Only Half of International Agreements Have Dispute Resolution Provisions, Which Half Needs Explaining?” *Journal of Legal Studies* 36: 189-212.

Koremenos, Barbara. 2005. “Contracting Around International Uncertainty.” *American Political Science Review* 99, 4: 549–65.

Lacy, Michael. 2006. “An Explained Variation Measure for Ordinal Response Models With Comparisons to Other Ordinal R^2 Measures.” *Sociological Methods & Research* 34: 469-520.

Leininger, Julia. 2013. “Protection Against Unconstitutional Change in the African Union.” Paper presented at the International Studies Association, San Francisco.

Lenz, Tobias. 2012. “Spurred Emulation: The EU and Regional Integration in Mercosur and SADC.” *West European Politics* 35, no. 1: 155-73.

Long, J. Scott and Jeremy Freese. 2006. *Regression Models for Categorical and Limited Dependent Variables Using Stata, Second Edition*. College Station, Texas: Stata Press.

Liao, T. F. 1994. *Interpreting Probability Models: Logit, Probit, and Other Generalized Linear Models*. Thousand Oaks, CA: Sage Publications, Inc.

Marks, Gary, Tobias Lenz, Besir Ceka (2013). “A Constructivist Theory of Regional Organization.” Paper presented at the International Studies Association, San Francisco.

Marks, Gary. 2012. “Europe and its Empires: From Rome to the European Union,” *Journal of Common Market Studies* 50, no. 1: 1-20.

Martin, Lisa. 1992. “Interests, Power and Multilateralism.” *International Organization* 46, no. 2: 765-92.

Mattli, Walter. 1999. *The Logic of Regional Integration: Europe and Beyond.* Cambridge, Mass: Cambridge University Press.

McCall Smith, James. 2000. “The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts,” *International Organization* 54, no. 1: 137-80.
Merrills, J.G. 2011. *International Dispute Settlement*. Cambridge: CUP.
Mokken, Robert J. 1970. *A Theory and Method of Scale Analysis*. The Hague: Mouton.
Mokken, Robert J., and Charles Lewis. 1982. “A Nonparametric Approach to the Analysis of Dichotomous Item Response.” *Applied Psychological Measurement* 7: 45-55.
Moravcsik, Andrew. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54, no. 2: 217-52.
Ordered Logistic Regression, UCLA Institute for Digital Research and Education. At: http://www.ats.ucla.edu/stat/stata/dae/ologit.htm, accessed on Mar 1, 2013.
Pevehouse, Jon C. 2005. *Democracy from Above? Regional Organizations and Democratization*. Cambridge: Cambridge University Press.
Pevehouse, Jon, Timothy Nordstrom, Kevin Warnke n.d. [2004], *Intergovernmental Organizations, 1815-2000: A New Correlates of War Data Set*. Available at http://www.correlatesofwar.org/, accessed on Dec 2, 2012.
Pietrangeli, Giulia. 2009. “Supporting Regional Integration and Cooperation Worldwide: An Overview of the European Union Approach.” In Philippe de Lombaerde and Michael Schultz eds. 2009. *The EU and World Regionalism: The Makeability of Regions in the 21st Century*. London: Ashgate, 9-44.
Posner, Eric A., and John Yoo. 2005. “Judicial Independence in International Tribunals.” *California Law Review* 93, no. 1: 1-74.
Powers, Kathy and Gary Goertz. 2011. “The Economic-Institutional Construction of Regions: Conceptualisation and Operationalisation.” *Review of International Studies* 37: 2387–416.
Rixen, Thomas and Bernard Zangl. 2012. “The Politicization of International Economic Institutions in US Public Debates.” *Review of International Organization*: 1-25.
Romano, Cesare. 1999. “The Proliferation of International Judicial Bodies: The Pieces of the Puzzle.” *New York University Journal of International Law and Politics* 31: 709-51.
Romano, Cesare. 2002. “International Organizations and the International Judicial Process: An Overview.” In Laurence Boisson de Chazournes, Cesare Romano, Ruth Mackenzie (eds). *International Organizations and International Dispute Settlement: Trends and Prospects*. Ardsley, New York: Transnational Publishers, 3-36.
Saris, Willem E., and Harm Hartman. 1990. “Common factors can always be found but can they also be rejected?” *Quality & Quantity* 24: 471-490.
Sandler, Todd. 1997. *Global Challenges: An Approach to Environmental, Political and Economic Problems.* Cambridge: CUP.
Sandler, Todd. 2004. *Global Collective Action.* Cambridge: CUP.
Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics.* Cambridge: CUP.
Simmons, Beth A., Frank Dobbin, and Geoffrey Garrett. 2006. “Introduction: The International Diffusion of Liberalism.” *International Organization* 60, no. 4: 781-810.
Singer, J. David. 1987. “Reconstructing the Correlates of War Dataset on Material Capabilities of States, 1816-1985.” *International Interactions* 14: 115-132.

Singer, J. David, Stuart Bremer, and John Stuckey. 1972. “Capability Distribution, Uncertainty, and Major Power War, 1820-1965.” In Bruce Russett ed., *Peace, War, and Numbers.* Beverly Hills, CA: Sage: 19-48.

Snidal, Duncan. 1985. “Coordination versus Prisoners Dilemma: Implications for International Cooperation and Regimes.” *American Political Science Review* 79, no. 4: 923–43.

Stein, Arthur A. 1983. “Coordination and Collaboration: Regimes in an Anarchic World.” In Stephen Krasner ed. *International Regimes.* Ithaca: Cornell University Press.

Stone Sweet, Alec, and Thomas Brunell. 1998. “Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community.” *American Political Science Review* 92, no. 1: 63–80.

Stone, Randall. 2010. *Controlling Institutions: International Organizations and the Global Economy.* Cambridge: Cambridge University Press.

Tallberg, Jonas, Thomas Sommerer, Theresa Squatrito, Christer Jönsson. 2013. *Opening Up: International Organizations and Transnational Actors.* Cambridge: CUP.

Tallberg, Jonas and James McCall Smith. 2012. “Dispute Settlement in World Politics: States, Supranational Prosecutors, and Compliance.” *European Journal of International Relations* 0: 1–27.

Tavares, Rodrigo and Michael Schulz. 2006. “Measuring the Impact of Regional Organisations on Peace Building.” In Philippe de Lombaerde (ed.). *Assessment and Measurement of Regional Integration.* London: Routledge, 232-51.

Télo, Mario. 2007. *Europe, a Civilian Power? European Union, Global Governance, World Order.* Basingstoke, UK: Palgrave.

Van Hüllen, Vera and Tanja Börzel. 2013. “The EU’s Governance Transfer From External Promotion to Internal Protection?” Paper presented at the International Studies Association, San Francisco.

van Schuur, Wijbrand H. 2003. “Mokken Scale Analysis: Between the Guttman Scale and Parametric Item Response Theory.” *Political Analysis* 11, no. 2: 139-163.

Weiler, Joseph. 1991. “The transformation of Europe.” *Yale Law Journal* 100: 2403–83.

Wouters, Jan and Maarten Vidal. 2008. “Towards a Rebirth of Benelux?” *Leuven Center for Global Governance Studies, Working Paper* No. 2s.

Yoo, John. 1999. “Globalism and the Constitution: Treaties. Non-Self-Execution, and the Original Understanding.” *Columbia Law Review* 1955: 2071-82.

Zürn, Michael, Martin Binder, and Matthias Ecker-Ehrhardt. 2012. “International Authority and Its Politicization.” *International Theory* 4, no. 1: 69-106.

Zürn, Michael. 1992. *Interessen und Institutionen in der Internationalen Politik: Grundlegung und Anwendung des situationsstrukturellen Ansatzes*. Opladen: Leske & Budrich.

APPENDIX I: 72 INTERNATIONAL ORGANIZATIONS (1950-2010)

Name of international organization		Years in dataset	Years with legal dispute settlement
Andean /CAN	Andean Community	42	42
APEC	Asia-Pacific Economic Cooperation	20	0
ASEAN	Association of Southeast Asian Nations	44	14
BENELUX	Benelux Community	61	49
BIS	Bank for International Settlements	61	61
CABI	CAB international	24	0
CARICOM	Caribbean Community	43	43
CCNR	Central Commission for the Navigation of the Rhine	61	0
CEMAC	Central African Economic & Monetary Union	45	11
CERN	European Organization for Nuclear Research	57	57
CIS/SNG	Commonwealth of Independent States	19	17
COE	Council of Europe	61	52
COMESA	Common Market for East/Southern Africa	29	29
ComSec	Commonwealth of Nations	46	0
EAC	East African Community	27	13
ECCAS-CEEC	Economic Community of Central African States	26	0
ECOWAS	Economic Community of West African States	36	10
EEA	European Economic Area	17	17
EFTA	Euro Free Trade Association	51	51
ESA	European Space Agency	31	31
EU	European Union	59	59
FAO	Food & Agriculture Organization	61	61
GCC	Gulf Cooperation Council	13	30
GEF	Global Environmental Facility/ Fund	17	0
IAEA	International Atomic Energy Agency	54	54
IBRD	World bank	61	0
ICAO	International Civil Aviation Organization	61	61
ICC	International Criminal Court	9	9
IGAD	Inter-Governmental Authority on Development	25	0
ILO	International Labour Organization	61	61
IMF	International Monetary Fund	61	0
IMO	International Maritime Organization	51	51
INTERPOL	International Criminal Police Organization	61	0
IOM	International Organization for Migration	56	56
ISA/ISBA	International Seabed Authority	17	17
ITU	International Telecommunication Union	61	61
Iwhale	International Whaling Commission	61	0
LAIA/ALADI	Latin American Integration Association	51	10
LOAS	League of Arab States	61	0
MERCOSUR	Common Market of the South	20	18
NAFTA	North American Free Trade Association	17	17
NATO	North Atlantic Treaty Organization	61	0

NordC	Nordic Council	59	0
OAPEC	Organization of Arab Petroleum Export Countries	43	32
OAS	Organization of American States	60	60
OAU/ AU	African Union	48	47
OECD	Organization for Economic Cooperation & Development	61	0
OECS	Organization of Eastern Caribbean States	43	43
OIC	Organization of the Islamic Conference	41	0
OIF/ACCT	Francophone Community	41	0
OPEC	Organization of Petroleum Exporting Countries	51	0
OSCE	Organization for Security & Cooperation in Europe	38	16
OTIF	Intergov. Organization for International Carriage by Rail	61	26
PCA	Permanent Court of Arbitration	61	0
PIF	Pacific Islands Forum	36	8
SAARC	South Asian Association for Regional Cooperation	25	5
SACU	Southern African Customs Union	42	0
SADC	Southern African Development Community	29	5
SCO	Shanghai Cooperation Organization	9	0
SELA	Latin American Economic System	45	0
SICA/CAIS	Central American Integration System	59	17
SPC	South Pacific Community	61	0
UN	United Nations	61	61
UNESCO	UN Education, Scientific, & Cultural Organization	61	61
UNIDO	UN Industrial Development Organization	26	26
UNWTO	World Tourism Organization	36	0
UPU	Universal Postal Union	61	61
WCO	World Customs Organization	59	0
WHO	World Health Organization	61	61
WIPO	World Intellectual Property Organization	44	44
WMO	World Meteorological Organization	61	61
WTO	World Trade Organization	16	16

The population consists of those international organizations that fulfill a minimum of six out of seven criteria:

- three or more member states
- a formal constitution or convention
- a legislative body, executive, and administration
- a permanent staff of 50 or more
- at least one annual meeting of the executive or legislature
- an address and website
- no emanation

Seventy of the 72 IOs in the dataset are in the Correlates of War (COW) Dataset (Pevehouse et al. 2004). The Shanghai Cooperation Organization and the European Economic Area are not in the COW dataset, but meet six of the seven criteria. IOs that do not meet the threshold but are in the COW dataset include the Association of African Trade Promotion Organizations (AATPO), which lacks a permanent secretariat, an annual meeting, and website (and is a subsidiary of the

African Union); the Australia-New Zealand-US Treaty Organization (ANZUS), which has two members and does not have a permanent secretariat, webpage or address; the Arctic Council, which had until 2011 a rotating secretariat of very small size. Several COW-listed IOs are subsidiaries of other organizations, such as the Andean Parliament, a consultative body to the Andean Community; the Nordic Council of Ministers, an executive body of the Nordic Council; or the European Central Bank, a European Union institution.

APPENDIX II: MEASURING THIRD PARTY DISPUTE SETTLEMENT

Third party dispute settlement refers to the existence of legally binding third party adjudication to resolve disputes and enforce compliance to the terms of an IO contract. By disputes about the IO contract we mean disputes about the interpretation of the IO's treaty, protocol, legal instruments or policy output. These can involve disagreements among member states, member states and an IO body, or member states and private parties. Hence, for IOs designed as a court, such as the International Criminal Court or the Permanent Court of Arbitration, the issue is not the legalism of these courts' judgments, but the extent to which member states party to the international agreement resort to binding dispute settlement to resolve disputes about the IO contract.

Legalism is measured along six dimensions. The first five are adopted from James McCall Smith (2000). The sixth dimension was added after consulting experts.[25] Each component is scaled from zero to one.

- *Is there automatic right for third-party review of dispute (0, 0.5, 1)?* A score of 1 means that a state party can initiate litigation over the objections of the party litigated against (automatic right). An intermediate score signifies that third-party access depends on the consent of a political body. In the World Health Organization, only disputes "which are not settled by negotiation or by the Health Assembly" (2005 Constitution art. 26) can be referred to the International Court of Justice.
- *Is the composition of the tribunal ad hoc or standing (0, 0.5, 1)?* IOs with a standing tribunal are scored highest on account of the intuition that decisions by standing tribunals are more consistent, and thus legalistic, over time (McCall Smith 2000). [26] An intermediate score is reserved for IOs with dispute settlement that relies on ad hoc arbitrators. The International Telecommunications Union states in its Optional Protocol on the Compulsory Settlement of Disputes that "each of the two parties to the dispute shall appoint an arbitrator. If one of the parties has not appointed an arbitrator within this time-limit, this appointment shall be made, at the request of the other party, by the Secretary-General" (art. 1). IOs without tribunal, such as the Organization for Islamic Countries or the League of Arab States, receive the lowest score.
- *Are rulings binding, conditionally binding or nonbinding (0, 0.5, 1)?* Our assessment is based on explicit language in the treaty, convention or protocol that sets up the dispute settlement mechanism. Conditional bindingness can be achieved in the following ways: a) a state

[25] With special thanks to Karen Alter for advice.

[26] Of 3206 observations, 665 observations (20.7%) use the International Court of Justice as standing tribunal.

consents *ex ante* to bindingness (e.g. ICJ statute: "states may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes (Art 36)"); b) a state registers a derogation or exception (e.g. the International Tribunal for the Law of the Sea (ITLOS) allows member states to limit exposure to binding jurisdiction); c) a decision requires *post hoc* approval by a political body (e.g. in ASEAN, recommendations of the Appellate Body require reverse consensus in the intergovernmental Senior Economic Officials' Meeting, that is, only member state consensus can reject the Appellate Body's recommendations (Art. 9.1 and 12.13)).

- *Do non-state actors have access to dispute settlement (0, 1)?* Under nonstate actors are understood third-party international organizations, parliaments, trade or public interest groups, or individuals. Access means that they can take a member state or IO body to court for violation of rights that evolve from state membership in that international organization. So the bar is pretty high: it is *not* sufficient for an IO body, say the general secretariat, to be able to take a member state to task (Romano 2002; for a slightly different definition, see Tallberg and McCall Smith (2012)). Our coding is dichotomous, and so when IOs impose limits on nonstate access, we evaluate the weight of constraints against the opportunity of access. In Mercosur, private actor access is mediated by national committees that wield a veto (Art. 39 of the Olivos Protocol); we code zero. In the Andean Community, nonstate standing by individuals and companies is restricted to actions of nullification, but unmediated (Arts. 17-19 of the Treaty creating the Court of Justice of the Cartagena Agreement); we code 1. The European Court of Justice of the European Union, like courts in several other organizations, requires nonstate parties to exhaust domestic channels before bringing their case higher up, but access is otherwise unmediated; we code 1.
- *Can a remedy be imposed (0, 0.5, 1)?* In a handful of IOs rulings of dispute settlement bodies take direct effect, that is, they bind domestic courts to act. Examples are the European Union, the Andean Community, ECOWAS, or the Intergovernmental Organization for International Carriage by Rail (OTIF). In OTIF, a ruling "shall become enforceable in each of the Member States on completion of the formalities required in the State where enforcement is to take place" (Art. 32 of 1999 Convention). An intermediate score is allocated to IO where states are authorized to take retaliatory sanctions, as is the case e.g. in Mercosur, the European Free Trade Association, the WTO or the Pacific Islands Forum. In the Pacific Islands Forum, the affected party is authorized to stop exercising their treaty duties to the defaulting party (PICTA treaty art. 22.6). Sometimes it is not the individual member state but a collective political body that can authorize sanctions. In the International Labour Organization the executive decides on sanctions in case of non-compliance (Art. 33 of the Constitution).
- *Is there a preliminary ruling system (0, 0.5, 1)?* This dimension is an addition to McCall's schema. A *preliminary ruling* system establishes an explicit link between national courts and the supranational legal system, and its presence has been said to be critical in the development of EU. A score of 1 is allocated when preliminary rulings are compulsory, that is, domestic courts are required to refer cases of potential conflict between national and supranational law to the supranational court or are required to heed rulings. IOs with a court that is the recipient of optional preliminary rulings receive a score of 0.5.

If an IO has more than dispute settlement mechanism, we code the most prominent one. In the Caribbean Community (Caricom), the Caribbean Court of Justice is coded as it constitutes the final step in a hierarchy of options for dispute resolution, which include good offices, mediation, consultations, conciliation, arbitration and adjudication (Art 188, Revised Caricom Treaty). The International Telecommunications Union has two dispute settlement mechanisms. The first of these, which has its legal basis in the 1947 Convention, was joined by a second mechanism when the Optional Protocol on the Compulsory Settlement of Disputes was adopted in 1992. The second is somewhat more authoritative, and we code this as the predominant dispute settlement from 1992.

Information for the coding comes primarily from founding documents, protocols, rules of procedure, and annual reports by dispute settlement bodies or the international organizations, all of which are in the public realm and can be accessed on the web, at the Union of International Associations library in Brussels, or by writing to the relevant international organization. We also rely on the secondary literature on international courts, adjudication and dispute settlement, and various websites. Dispute settlement is one component of a more comprehensive coding of the international authority of international organizations (Hooghe et al. forthcoming). Case studies detail and explain coding decisions. Their purpose is to make our judgments explicit, and therefore open to amendment or refutation.

APPENDIX III

Descriptive statistics

Variable	Mean	Standard deviation	N
Trade IO	0.30	0.46	3240
Security IO	0.10	0.30	3240
Trade interdependence	6.20	14.12	2956
Regional IO	0.23	0.42	3240
Democracy	13.67	5.00	3153
Power asymmetry	0.35	0.20	3161
UN family	0.22	0.41	3240
EU funding	0.07	0.26	3167