THE RULE OF LAW IN THE GLOBAL ECONOMY: EXPLAINING INTERGOVERNMENTAL DELEGATION TO PRIVATE TRIBUNALS

Thomas Hale[1]

Abstract: Global trade depends on the ability of firms to make credible commitments across borders. But, absent a global state, how can credibility be assured? Today the majority of significant transborder contract disputes are adjudicated in private arbitral tribunals. The decisions of these bodies are enforceable in the public courts of the 146 countries that have ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, making it a central pillar of the global economy. The paper evaluates alternative explanations for this widespread delegation to private judicial authority against qualitative data of the treaty's negotiation and a statistical analysis of ratification from 1958 to the present. Unlike the WTO, PTAs, or BITs, the transnational commercial arbitration regime has been driven by technical legal norms transmitted via an epistemic community of legal experts, not the material interests of states or interest groups.

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1. Introduction

Economic exchange depends on the ability to make credible deals, or, as Hume put it, "The freedom and extent of human commerce depend entirely on a fidelity with regard to promises."[2] For all but the most rudimentary face-to-face transactions—that is, for global trade, worth about $15 trillion in 2010—these promises take the form of contracts. Contracts, in turn, require a system for adjudication and enforcement to generate fidelity. Canonically, we think of the laws, courts, and police power of the state as the chief providers of this function.[3] But transborder contracts, then, pose a particular difficulty. Without a global state, which laws, courts, and police powers will ensure their enforcement?

Today this crucial function is provided by a complex mix of domestic laws and courts, international treaties, and—chiefly—private arbitral tribunals, which together

[1] Postdoctoral research fellow; Blavatnik School of Government, Oxford University; Thomas.hale@bsg.ox.ac.uk

[2] This quote serves as an epigraph for McMillan, J. and C. Woodruff (2000). "Private Order under

[2] This quote serves as an epigraph for McMillan, J. and C. Woodruff (2000). "Private Order under Dysfunctional Public Order." Michigan Law Review **98**(8): 2421-2458.

[3] In actuality, traders have relied on an wide range of institutions throughout history, public and private, to enforce their contracts, including kinship ties Greif, A. (1993). "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition." The American Economic Review **83**(3): 525-548., merchant guilds Milgrom, P., D. North, et al. (1990). "The Role of Institutions in the Revival of Trade: the Law Merchant, Private Judges, and the Champagne Fairs." Economics and Politics **2**: 1-23, Greif, A., P. Milgrom, et al. (1994). "Coordination, Commitment, and Enforcement: The Case of the Merchant Guild." The Journal of Political Economy **102**(4): 745-776, Okazaki, T. (2005). "The Role of the Merchant Coalition in Pre-Modern Japanese Economic Development: An Historical Institutional Analysis." Explorations in Economic History **42**: 184-201., and merchant courts Benson, B. (1989). "The Spontaneous Evolution of Commercial Law." Southern Economic Journal **55**(3): 644-661.

constitute a system of transnational commercial arbitration (TCA). Private tribunals hear most of the significant cross-border contract disputes between firms, including those pertaining to buying or selling goods and services, licensing technology, or otherwise protecting property rights in private-private transactions. The parties may choose the venue of the arbitration, the laws and rules (public and private) that govern the decision, and in most cases the arbitrators themselves. Hearings and awards are typically secret. Most states, including all the sizeable economies, have collectively agreed that private arbitral decisions can be enforced in domestic courts with only minimal challenge or revision.

The result is a transnational, hybrid "regime complex" (Victor and Raustialia 2004) in which states cooperate to put the coercive authority of their domestic courts behind private dispute resolution bodies. The level of delegation to private tribunals can be striking. In 1990 a US Federal district court sided with the Libyan government to enforce a private arbitral agreement rendered by a Paris-based institution against Sun Oil, a US firm. The company had failed to carry out an exploration contract with a Libyan government-owned company in order to comply with US sanctions on that country. Though the company pleaded that enforcing the award would impair "the ability of the US government to make and enforce policies with economic costs to US citizens and corporations," the district court nonetheless ordered it to compensate the Libyan government as per the terms of the private arbitral award (Stone Sweet 2006). In this judgment the US court relied on a little known but crucial treaty, the 1958 New York Convention on the Enforcement of Foreign Arbitral Awards (hereafter the NYC). This UN-brokered accord lays at the heart of the regime complex for transborder commercial disputes, committing signatories to enforce the awards given out by private arbitral institutions abroad.

In this paper I seek to explain why states have chosen to collectively delegate judicial authority over private commercial disputes to private bodies, focusing principally on the New York Convention. Strikingly, students of IPE have left this question largely unaddressed,[4] despite extensive attention in the literature to international organizations that provide the rule of law for state-state trade disputes and state-private investment disputes. One likely reason for this neglect is the quasi-private nature of TCA, which falls outside the pattern of intergovernmental cooperation and delegation that undergirds, for example, the trade, investment,[5] or finance regimes. This hybrid nature can render TCA "invisible" to scholars working in the state-centric approach common in IPE (Cutler 2003), although the politics of private governance has increasingly figured on the IPE agenda.

Instead, transborder commercial dispute resolution has been explored chiefly by legal scholars. This literature is more focused on interpreting and understanding the

[4] Exceptions that prove the rule—discussed below—include Cutler (2003), Lehmkuhl, Mattli (2001), and work-in-progress by Olabisi and Masten (2011).

[5] This regime, like the human rights regime, empowers private actors, giving them standing under international law and defining their rights vis-à-vis states. However, the chief institutions remain decidedly intergovernmental, unlike TCA. Bilateral investment treaties (BITs) commit countries to honor the property rights of foreign investors based in the contracting parties. Firms that feel a state has expropriated their property may typically sue that state in an international public court, the International Centre for the Solution of Investment Disputes (ICSID).

complex laws surrounding TCA than in exploring their political and economic foundations. However, the extensive socio-legal literature on the subject does offers a sharply different explanation for the development of the hybrid regime than the types of theories and mechanisms the majority of IPE scholars have advanced for parallel "rule of law" institutions like the World Trade Organization (WTO) or bilateral investment treaties (BITs). Whereas the latter, broadly speaking, emphasize the material interests of states and interest groups, as mediated by domestic and international politics, the former instead focuses on the evolution of legal norms through transnational communities of practice.

Which of these mechanisms best explains the institutions that provide the rule of law for private commerce across borders? On a theoretical level, there is much at stake. Some authors argue that the transnational, private nature of the institutions and the ideational mechanisms through which they operate make TCA an anomaly for rationalist institutionalism (Cutler 2003). But across a range of issue areas, global governance is evolving to include a more diverse array of institutions than simply the "traditional" model of treaty-based intergovernmental organizations (Hale and Held 2011). Private institutions are a large component of this shift. If institutionalist theories of cooperation cannot account for them, they will become decreasingly useful for important areas of global politics.

In this paper I develop these competing views into a series of falsifiable hypotheses and consider how well each explains multilateral delegation of judicial authority to private arbitral tribunals via the New York Convention. Section two provides an overview of the regime complex for TCA, outlining the key institutions and actors. Section three establishes the importance of the topic for students of IPE through statistical analysis of the New York Convention's impact on trade. I estimate this impact is similar in magnitude to membership in the GATT/WTO.

Section four then turns to the competing theoretical explanations for collective intergovernmental delegation to private adjudicators. Rationalist and ideational theories, building on the types of claims advanced in the literature, are presented. Sections five and six then test these propositions, first via a qualitative analysis of the negotiation of the NYC, and then in quantitative analysis of national decisions to ratify the Convention. Paralleling literature that has studied the diffusion of other keystones of global commerce, including the WTO, BITs, and PTAs, I perform an event history (survival) analysis on NYC ratifications amongst all countries in the world from the treaty's creation until the present.

I find significantly more support for the ideational theories rooted in the socio-legal literature than the rationalist mechanisms that dominate the IPE literature. These results suggest that students of IPE should employ a broader range of theoretical tools to account for the range of institutions that underpin the global economy.

2. The Regime Complex for Transborder Commercial Dispute Resolution

Dispute resolution can be divided into two basic functions, adjudication, in which rival claims are brought before a body that weighs them against a set of rules, and enforcement, in which the judgments rendered by that body are complied with, or not, under varying types of incentives.

In the contemporary TCA regime, adjudication is performed chiefly by private arbitral tribunals. What are these private courts like? Even that basic question is difficult to answer, as there are probably around 1000 private arbitration providers in the world, with varying rules and structures. Indeed, this flexibility is a defining characteristic of TCA. However, a core set of rules and practices apply to the majority of arbitrations.[6]

First, firms must select arbitration as the way to resolve disputes between them. In the majority of cases this choice is made when a contract is signed, and applies only to the commitments stated in the contract. Firms that find themselves in conflict may also select arbitration *ex post*, although this is typically more difficult as parties can see more clearly how the rules chosen to resolve the dispute—on which they both must agree—may favor one party over another.

Second, firms choose the type of arbitration they want. "Ad hoc arbitration," in which parties or arbitrators organize the arbitration proceedings themselves, is less common than "institutional arbitration," in which an organization manages the process, the vast majority of them private. One of the largest and most respected is the International Chamber of Commerce's International Court of Arbitration, based in Paris.

Third, firms may also choose the rules that govern the dispute. They may select the national laws of any country, rules laid out in international agreements, rules specified in the contract itself, or general commercial practices. This last category may include *lex mercatoria*, a body of private law that codifies the practice of merchants. Firms may also select a combination of different rules to govern either the entire dispute or various parts of it, and may give the arbitrators more or less leeway to apply the body or bodies of law that they see fit. Even simply the reasoned judgment of the arbitrator may be selected as a commanding legal authority.

One constraint on this flexibility is the choice of the seat of arbitration—where the proceedings take place—which parties may or may not specify in advance. National laws on arbitration vary, and some impose conditions on arbitrations that occur within their boundaries. For example, some jurisdictions do not allow parties to challenge any substantive aspects of an arbitral decisions in public courts. Others are less deferential, granting firms the right to appeal under some conditions. Jurisdictions also differ in the extent to which they allow public policy concerns to enter into judicial review of arbitral awards. The amount of deference granted to private arbitral institutions thus varies across countries.

Fourth, firms typically choose the arbitrators who hear the case. In most cases, one arbitrator is selected by each party, and these two select a third. Arbitrators are mostly drawn from a relatively small pool of legal specialists, elite lawyers who trade on their reputations and contacts. Less commonly, non-lawyers like accountants or industry experts may be selected as well. In large disputes, arbitrators can receive sizeable payments for their services. As in public courts, parties to a dispute typically employ their own lawyers as well.

[6] More detailed descriptions can be found in the large number of legal treatises on the subject, for example Moses, M. L. (2008). The Principles and Practice of International Commercial Arbitration. Cambridge, Cambridge University Press.

Once an award is rendered, the private institution's work is essentially done. Adjustments and appeals are typically not possible, and voluntary compliance is the norm. But should the losing party not comply, the case shifts to the enforcement side of the regime, which is handled by public domestic courts applying international treaty law. Winning parties may seek recognition and enforcement of the arbitral award in a public court. Most countries have made arbitral awards granted by *any* arbitral institution enforceable in state courts, either through their domestic laws or by joining the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") or other treaties, which make foreign arbitration decisions binding in their courts. Strikingly, these public laws and treaties make arbitral awards significantly easier to enforce around the world than decisions rendered by public courts, which are often quite difficult to enforce in foreign jurisdictions.

The final element of the regime are a series of technical legal intergovernmental organizations who propagate voluntary guidelines for private arbitral tribunals and model arbitration laws for nation states. The most important are the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT). These "soft law"-makers are treaty-based organizations, but act much more as transgovernmental networks in that decisions are taken mainly by technical experts, not professional diplomats (Slaughter 2004).

Before proceeding, it is useful to stress that the complexity of TCA creates special challenges for social scientists. Several characteristics of the regime make it challenging to study (which may also help account for its underrepresentation in the IPE literature). One, while a core set of characteristics can be identified, the exact rules and processes of arbitration vary significantly as parties to an agreement have significant leeway to design the rules as they see fit. This variability makes it difficult to compare cases or to generalize about TCA as a whole.

Second, the universe of arbitration cases is practically impossible to define. Not only is transnational arbitration dispersed across scores of arbitral institutions in dozens of countries, some of it is ad hoc, not connected to any institution at all. So we do not know how many disputes are settled through TCA. Furthermore, we do know how many disputes are settled through other types of institutions like state courts, mediation, and trade association arbitration.

Third, and related, arbitration is almost always secret. While some arbitral institutions have released basic data about the number of cases they handle, they closely guard information about the parties, the governing rules, decisions, and outcomes. Some more famous cases are reported in the business and legal press, but these are of course the exceptions.

3. Why TCA Matters: The Impact of the NYC on Trade

In this section I estimate the effect of participation in the transnational arbitration regime—i.e. treaty-based reciprocal national commitments to enforce foreign arbitral awards—on global trade. I find this effect is comparable in magnitude to the effect of

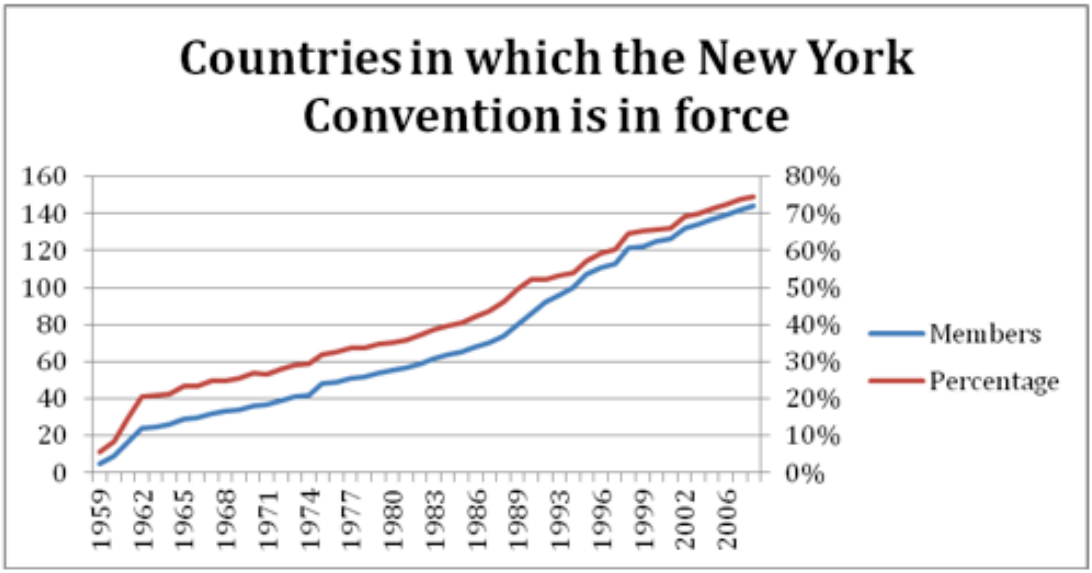
participation in the GATT / WTO. The implication is that transnational commercial arbitration should be understood as a central pillar of the global economy.

The trade literature has focused primarily on tariffs, quotas, and other trade barriers. Removing these impediments is the reason states have created the GATT / WTO, PTAs, common markets, and other political institutions that IPE scholars typically study. But so thorough has the focus on these organizations been, the literature today essentially reduces the study of the trade regime to the study of what we might more accurately call the "trade barrier reduction regime." However, other kinds of institutions are also important for the maintenance of cross-border commercial exchange. Transnational commercial arbitration is one.

It is only relatively recently that a rough consensus has emerged on the effect of the GATT/WTO on trade (Rose 2004; Gowa and Kim 2005; Goldstein, Rivers et al. 2007; Tomz, Goldstein et al. 2007). I build directly on this literature, and in particular the work of Tomz, Goldstein, and Rivers (TGR) to estimate the effect of transnational commercial arbitration. The following analysis uses the same data and gravity model as TGR, supplemented with data regarding participation in the arbitration regime. For a description of the data and model, see Tomz, Goldstein, and Rivers (2007).

Countries participate in the arbitration regime to varying degrees. Fundamentally, domestic politics determine the exact level of deference arbitration is shown by state courts. In many countries, such as the United States, decisions made by judges—operating at some distance from interest group politics—shape the extent to which transnational arbitration is binding domestically. At the same time, a number of international instruments have sought to harmonize national policies toward arbitration. The 1985 UNCITRAL Model Law on International Commercial Arbitration is a "soft law" set of expert-generated guidelines that countries can choose the follow. The core the arbitration regime, however, is the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). This treaty commits countries to enforce foreign arbitral decisions in their own courts, but at the same time largely bars countries from re-hearing or altering arbitral decisions. Today 146 countries are members (figure one). Membership in the New York Convention, therefore, can be considered a rough approximation of a country's involvement in the arbitration regime generally.

Figure 1: Participation in the 1958 New York Convention (source: UN Treaty Database)



To my knowledge, only one other econometric study has sought to evaluate the effect of transnational arbitration on trade (Leeson 2008). This uses the data and model employed by Rose (2004), and finds that participation in transnational commercial arbitration increases a country's trade by 15-38 percent. Leeson characterizes this effect as "modest," given how central contract enforcement is thought to be to economic exchange, but this is a misleading interpretation. After all, countries that do not participate in the New York Convention do not render contracts unenforceable. Rather, they simply retain that function in public courts. The increase in trade that Leeson attributes to the mere delegation of contract enforcement to private courts is, in fact, remarkable.

But as important as Leeson's finding, correctly interpreted, is, it actually underestimates the impact of TCA on trade. Leeson's model, like Rose's, does not accurately measure participation in the GATT/WTO by including non-member participants in the analysis (Tomz, Goldstein et al. 2007). This is an important control variable. There are also some straightforward errors in the Rose data that TGR correct. I re-estimate the effect of the New York Convention on trade using the superior TGR data and model (for a description, see the original TGR paper).

To test whether membership in the New York Convention affects a country's trade, I add two dummy variables to TGR's analysis, one to identify those dyads in which one of the countries is a current member of the New York Convention and another for dyads in which both countries are members. The results are reported in table two. It would have been useful to also control for the quality of contract enforcement in a country's public courts. Unfortunately, useful data for the time period and countries considered are not available (Skaaning 2010).

Table 1: The effect of the NYC and the GATT/WTO on bilateral trade, 1946-2004 (*** p<0.01, ** p<0.05, * p<0.1. Variable not reported: common country)

	Year FE	*Year, country FE*	*Year, dyad FE*
One member in New York Convention	***0.0761****	***0.253*****	***0.180*****
	(0.0344)	(0.0299)	(0.0233)
Both members in New York Convention	***0.170*****	***0.505*****	***0.450*****
	(0.0432)	(0.0371)	(0.0329)
Both formal members of GATT/WTO	0.164**	0.542***	0.479***
	(0.0669)	(0.0634)	(0.0612)
Both non-member participants	0.414***	0.631***	0.555***
	(0.0706)	(0.0641)	(0.0623)
Formal member and non-member participant	0.809***	0.830***	0.835***
	(0.141)	(0.117)	(0.0932)
Formal member and non-participant	0.0622	0.244***	0.243***
	(0.0653)	(0.0569)	(0.0568)
Non-member participant and non-participant	0.335***	0.386***	0.327***
	(0.0901)	(0.0778)	(0.0667)
GSP	0.833***	0.688***	0.165***
	(0.0318)	(0.0315)	(0.0278)
Log distance	-1.122***	-1.312***	
	(0.0224)	(0.0229)	
Log product real GDP	0.917***	0.189***	0.477***
	(0.00980)	(0.0513)	(0.0474)
Log product real GDP per capita	0.314***	0.508***	0.196***
	(0.0142)	(0.0491)	(0.0457)
Regional FTA	1.191***	0.929***	0.744***
	(0.111)	(0.129)	(0.0721)
Currency union	1.113***	1.174***	0.600***
	(0.123)	(0.122)	(0.117)
Common language	0.313***	0.273***	
	(0.0403)	(0.0435)	
Land border	0.532***	0.279**	
	(0.110)	(0.108)	
Number landlocked	-0.273***	-1.229***	
	(0.0313)	(0.326)	
Number of islands	0.0133	-0.876***	
	(0.0362)	(0.189)	
Log product land area	-0.0911***	0.352***	
	(0.00796)	(0.0325)	
Common colonizer	0.525***	0.606***	
	(0.0676)	(0.0645)	
Currently colonized	0.946***	0.725***	0.272*
	(0.232)	(0.260)	(0.159)
In a colonial relationship	1.160***	1.274***	
	(0.116)	(0.114)	
Constant	-28.11***	-4.786***	-15.61***
	(0.370)	(1.306)	(1.548)
Observations	234,597	234,597	234,597
R-squared	0.650	0.704	0.854

From the results, we can calculate the estimated average percentage increase in trade that results from participation in the arbitration regime via the formula $e^{\beta} - 1$. These results are reported in table two.

Table 2: Average increase in trade from participation in the New York Convention and the GATT/WTO

	Year FE	Year & country FE	Year & dyad FE
One in NYC	8%	29%	20%
One in GATT/WTO	No result	27%	28%
Both in NYC	19%	66%	57%
Both in GATT/WTO	18%	72%	61%

The results are robust to the various sensitivity measures performed by TGR. The conclusion is striking. If one were to look only at this analysis, one would be forced to conclude that the New York Convention on the Enforcement of Foreign Arbitral Awards is just as important for global trade as the GATT/WTO.

4. Explaining Intergovernmental Delegation to Private Authority

Under what conditions do states delegate authority for transborder commercial dispute adjudication to private tribunals? Here I outline two broad theoretical perspectives that offer several competing hypotheses. Rationalist theories, common to mainstream IPE, are contrasted with socio-legal theories that dominate the law literature and critical perspectives on TCA. While a comprehensive literature review is beyond the scope of the present paper, I highlight the key insights of both schools of thought and outline a set of falsifiable hypotheses that aim to render these ideas amenable to empirical testing.

Rationalist approaches

Complex trade creates a functional need for institutions that make promises credible—Hume's "fidelity." IPE scholars have long recognized the utility of delegating dispute resolution to an impartial entity to enhance the credibility of a commitment (Keohane 1984). Indeed, such strategies are well documented in the trade regime, in which the WTO's dispute settlement mechanism judges disputes, and the investment protection regime, in which states allow themselves to be challenged in under BITs, with the arbitrating body most often being the intergovernmental International Centre for the Settlement of Investment Disputes (ICSID).

In the rationalist view, these institutions are created (or not) from the strategies of self-interested actors competing and cooperating to achieve their goals. Under the traditional institutionalist logic, states will delegate to increase the credibility of their commitments if they have an interest (e.g. promoting trade) in doing so. A modified, "two-level games" or "liberal" version of institutionalist theory considers how domestic political struggles affect the need and prospects for cooperation (Milner 1997; Moravcsik 1997; Mansfield, Milner et al. 2007). In this view, international agreements to delegate authority serve as tools for one part of government, such as the executive, to bind its hands and thus increase leverage against other domestic groups. States may choose to delegate because one branch of government or the interest

groups behind it wish to circumvent another (e.g. legislatures, future governments, or, in this case, domestic courts).

Unlike in the trade and investment regimes, however, to my knowledge no intergovernmental court to govern private commercial disputes has *ever* been created, not even amongst highly interdependent, highly institutionalized economies like the European common market.[7] An alternative IR solution might be a treaty that regulated the way in which domestic courts handled transborder cases and provided international recognition for cases decided abroad. These kinds of arrangements do exist, but only for a small fraction of the global economy. How, then, to account for the TCA regime?

While the majority of IPE literature remains focused on public institutions, a small but growing group of scholars has taken up the challenge of explaining private transborder governance institutions (Cutler, Haufler et al. 1999; Hall and Biersteker 2002; Baron 2003; Cashore, Auld et al. 2004; Mattli and Buthe 2004-2005; Graz and Nölke 2008; Büthe 2009; Mattli and Woods 2009; Bartley 2010; Büthe 2010; Green 2010). To my knowledge, only one rationalist IPE study explicitly addresses institutional variation in transborder dispute resolution (Mattli 2001). Mattli seeks to apply the principles of the Rational Design (RD) project (Koremenos, Lipson et al. 2001) to international arbitration, showing how demand for institutions with certain functional characteristics has led to an increase in private arbitration. The basic argument is that "the surge in popularity of arbitration as a means of international commercial dispute resolution can be attributed to features of arbitration that the international business community values for a growing number of disputes… These features include flexibility, technical expertise, privacy, confidentiality, and speed" (Mattli 2001, p. 921). Unfortunately, this approach marries only imprecisely with the RD framework that describes institutional variation in more abstract concepts like "centralization" and "flexibility" and relies, in Mattli's application, on uncertainty about the state of the world as the chief independent variable. Mattli discusses a number of cases in which firms faced significant uncertainty and chose arbitration, but lacks sufficient quantitative or qualitative data to link these causally.[8] Still, the study shows the utility of explaining institutional variation through demand for the functional attributes they provide.

[7] A possible exception could be war claims tribunals, which states have often created in the wake of a conflict to resolve the private property disputes and contract problems created by interstate war. Such institutions are, however, aimed a much narrower class of disputes than general commercial dispute resolution. Indeed, their existence makes the lack of a public court for commercial disputes even more puzzling, because it shows that states *can* and *have* performed this function through intergovernmental agreements.

[8] For example, he notes that the caseload of the ICC court has more interregional cases than intraregional ones. Positing that interregional disputes face more uncertainty than intraregional ones (a contestable claim), he argues that this demonstrates a preference for flexible mechanisms (arbitration) under conditions of uncertainty. But the evidence is inadequate to support this claim. First, ICC cases represent only a small fraction of total arbitration cases, and a biased one. Because the ICC is the most globally recognized arbitration institution, we should expect it to have more interregional cases than a local arbitration organization would. Second, Mattli does not offer comparable data on national courts or other arbitration institutions, or on the universe of disputes generally, so it is unclear what the proportion of interregional to intraregional cases is compared to. As discussed above, these kinds of empirical difficulties have made the study of transborder dispute resolution difficult.

Perhaps the closest work, theoretically, to the present study is a recent dissertation by Green, which explains the emergence of private authority in environmental governance through an institutionalist logic (Green 2010). In her argument private authority emerges when private actors set rules to which other actors defer, a process she links to demand and supply for global governance (Keohane 1982). Demand will exist if private authority offers functional benefits over public institutions. Supply, in turn, can take two forms: bottom-up "entrepreneurial" governance initiated by private actors, or top-down governance "delegated" from states. Two conditions shape this choice. When the preferences of states converge and a natural focal institution exists, private governance is more likely to be delegated. When the reverse is true, private actors will initiate governance themselves.

This theory, by linking intergovernmental and transnational institutions, and the politics around them, offers a promising template for the present project. Though it explains many of the environmental institutions Green examines, it faces two difficulties vis-à-vis transborder dispute resolution. First, Green conceptualizes variation in transborder political institutions as, essentially, intergovernmental agreements and organizations, delegated private governance, and self-initiated private governance. In TCA we also observe hybrid governance arrangements that cannot be described as "mere" delegation of technical functions. Second, Green seems to attribute demand for private governance chiefly to functional characteristics, its potential to fulfill some task more efficiently. The theory therefore does not allow us to test the possibility that demand for private governance may result from its distributional implications, as, for example, authors in the critical theory field suggest (below).

In sum, the rationalist approach calls attention to a few key explanators. First, we must understand firms' preferences over alternative dispute settlement mechanisms, as firms' "demand" for private arbitration is the foundation of rationalist theories of delegation. When firms have a need to make credible commitments, they will desire institutions that a sufficiently impartial to earn the trust of their trading partners. Moreover, they will desire institutions with functional characteristics—speed, expertise, cost, etc.—that help them achieve this goal most efficiently.

In other work I explore the determinants of firm demand more fully. For present purposes, it suffices to note that firms engaged in international trade will prefer credible commitment mechanisms more than non-trading firms. Firms' demand for private mechanisms is also driven by how good public alternatives are, I argue. All things equal, demand is likely to be higher when public courts are too weak or inefficient to provide the credibility traders' require. In other words, delegating judicial authority to private actors may allow pro-trade firms to avoid the limitations a weak domestic rule of law may impose upon them.

Second, we need to understand the domestic constellation of power and interests. That is, under what conditions is the delegation firms demand, if any, "supplied" by the state? Studies of trade agreements have emphasized how domestic political conditions affect the likelihood of international cooperation (Milner 1997; Maggi and Rodriguez-Clare 1998; Grossman and Helpman 2002; Mansfield, Milner et al. 2007). These studies confirm the basic intuition that when pro-trade interest groups rise to power, cooperation is more likely. However, they also highlight how domestic

political institutions (like regime type or the number of veto players) systematically condition interest group politics. Mansfield et al. (2007), for example, show how the presence of veto players reduces the likelihood that a county will form PTAs.

Applying these ideas to TCA, the first rationalist hypothesis can be stated as follows:

H1 Domestic politics*: States will delegate adjudication of transborder commercial disputes to private bodies when the dominant domestic interest groups have a functional need to make credible transborder commitments and public courts are weak or inefficient.*

Third, the international constellation of power and interests is also relevant, as pressure to delegate may come from other states. The logic is similar to H1. Just as pro-trade firms may desire their own states to delegate judicial authority, and thus enhance their ability to credibly commit, they also require the states of potential trading partners to take similar steps. After all, both parties must be able to commit credibly to a transaction before it is likely to occur. States that are responsive to pro-trade interest groups will thus be likely to push recalcitrant states to delegate authority to private actors as well. When such states are dominant, we are likely to see international conventions providing for collective delegation to private authorities.

H2 International politics*: When the dominant economic interest groups within a state require their trading partners to be able to make credible commitments, that state will pressure others to delegate authority to private bodies. When such states are relatively powerful, there will be collective delegation.*

Last, the literature on the investment protection regime reminds us that firms' "demand" for credibility may be driven by the actions of trading partners through a mechanism of either competitive or cooperative diffusion. As Simmons and Elkins note in their seminal article on the subject, "one of the most important developments over the past three decades has been the growing willingness of governments to open up the national economy to global market forces" (Simmons and Elkins 2004, p. 171). The phenomenon is complex, as it involves the interaction of domestic and international political dynamics, manifests across multiple policy dimensions, and seems influenced by a host of causal factors. Nonetheless, Simmons and Elkins and the scholars that have followed them have demonstrated that macro-level policy diffusion models can shed light on the mechanisms behind liberalization. Testing a variety of policy dimensions (capital account liberalization, current account openness, and exchange rate unification) against a host of mechanisms, they find that economic competition—especially for FDI—is the strongest force behind policy convergence, affecting liberalization more than, for example, the existence of successful role models or cultural similarities (Simmons and Elkins 2004, p. 182). This pattern also holds for BITs, the authors find (Simmons, Elkins et al. 2006) and even for private environmental governance mechanisms (Cao and Prakash 2011).

Applying these insights to TCA, we are therefore curious if the patterns of delegation amongst a country's top trade partners or trade competitors affects the likelihood of joining the NYC.

H3 Competitive / cooperative diffusion*: A country will be more likely to delegate authority to private tribunals if its primary trade partners do, or its primary export competitors do.*

Socio-legal and critical approaches

The most prominent study of TCA (outside of technical legal manuals) comes from a sociological perspective, employing Bordieu's concept of an organizational "field" to examine the development of TCA (Dezalay and Garth 1996). A field in this sense is "a symbolic terrain with its own networks, hierarchical relationships, and expertise, and more generally its own rules of the game, all of which are subject to modification over time and in relation to other fields" (Dezalay and Garth, p. 16).[9] A field is made up of more than simply the institutions for transborder dispute resolution; it includes the entire "social space" or "area of practice" around these institutions, including lawyers and firms, and their beliefs, motivations, and patterns of behavior. Dezalay and Garth chart the development of commercial arbitration from a somewhat obscure, chiefly European practice to a mainstay of global commerce practiced by globalized law firms. They highlight the arbitration community itself as the chief driver of the phenomenon, as the practice of arbitration became increasingly useful—and lucrative and commercialized—over the long postwar period of globalization.

A similar perspective, albeit stated in terms of critical theory, can be discerned in the only book-length treatment of transborder dispute resolution in political science. This approach eschews the "problem-solving nature" of mainstream political science and law which "takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organized, as the given framework for action" (Cutler 2003, p. 60-61). Instead, critical theory advocates an explicitly "normative and transformative" approach that is "informed by the values and goal of human emancipation" and aware of the social world as a "continuing process of social change" (Cutler 2003, p. 61). Unlike much of the political economy and IR literature, Cutler argues that existing approaches have failed to explain transformations in global governance because they see law as "peripheral," not a "historically effective material and ideological force" (Cutler 2003, p. 61). She instead advocates a Gramscian approach that treats law as a "form of praxis involving a dialectical relationship between theory and practice, thought and action, and law and politics" (p. 103). This approach draws Cutler's attention to the "mercotocracy," which she sees as the legal elites (and their beliefs and practices) who have, through "legal hegemony," supplanted the state to create a more privatized system of dispute resolution (Cutler 2003, p. 180).

How might we render these ideas as a falsifiable social scientific theory? For the epistemic explanation to obtain, several conditions must hold, I argue. First, actors must be linked together in organizational fields and transnational epistemic

[9] Dezalay and Garth (p. 15) notes that this concept "shares affinities" with IR concepts like epistemic communities (Haass 1992) or transnational issue networks (Keck and Sikkink 1994). The canonical defining is "a recognized area of institutional life," a cluster of organizations and actors characterized by 1) a heightened degree of interaction between organizations in the field, 2) the "emergence of sharply defined interorganizational structures of domination and patterns of coalition," and 3) "the development of a mutual awareness among participants in a set of organizations that they are involved in a common enterprise" (Dimaggio and Powell 1992, p. 65).

communities. In the case of transborder dispute resolution, the legal community provides a common social space in which norms can disperse. Lawyers and legal organizations like firms, courts, and law schools experience a heightened degree of interaction. They are connected through interorganizational structures—the norms and procedures of law, principally, but also economic relations—that link them together. And they are mutually aware of themselves as a group.

We can also differentiate narrower fields that overlap or are contained within the legal field. For example, different legal traditions and language groups form distinct communities of practice around them. More specifically still, national governments are key generators and enforcers of law, making state boundaries are an important source of differentiation. For example, an American legal field can be distinguished from a Chinese legal field. Training and accreditation are different, different court systems are employed, black letter laws differ, and informal and private institutions like bar associations and, indeed, private arbitral tribunals differ.

There is also an organizational field of private international law, of which transborder commercial arbitration is an important component, that overlaps with traditional, cultural, or national organizational fields. This field includes the lawyers who represent firms in transborder commercial disputes, the arbitrators who often judge them, and the private arbitral institutions that manage these cases. It also includes associations of arbitrators, the schools that train them, and the international institutions that create hard or soft international law in this area, such as UNCITRAL and UNIDROIT.

At a greater level of specificity lies in a distinct concept, the epistemic community, which is likely more familiar to scholars of international relations. In Haas's classic definition, "An epistemic community is a network of professionals with expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas 1992, p. 3). Epistemic communities are therefore more specific than organizational fields, in that they include only like-minded experts who share common values or skills, for example, nuclear arms experts or climatologists. They are also often dedicated to pursuing a certain policy outcome. In this way, epistemic communities can be perceived as akin to interest groups, though they are often more diffuse.

In the realm of transborder commercial disputes, the private arbitration community can be seen as a transnational epistemic community. The lawyers that teach and practice arbitration (either as arbitrators or advocates for parties) are a highly specialized and organized sub-community of lawyers. They typically specialize in arbitration cases, building a unique set of skills and expertise. These lawyers are often strong advocates of arbitration over litigation, seeing it as a superior form of dispute resolution. These epistemic communities act like "normative interest groups" within the larger organizational field of law.

Second, we should understand the mechanisms through which these fields and networks are constructed, and through which they inculcate actors into certain norms and practices. In the context of transborder dispute resolution, the dominant mechanism is a logic of legal appropriateness, I argue. The practice of law forces actors to logically deduce a "correct" principle from a body of text and practice, and

so we should expect logics of appropriateness to be particularly controlling within a legal field. That said, the process of settling on a controlling norm is often contested. A certain legal idea or practice, such as TCA, begins with a small group of advocates, who then seek to spread it throughout the field. A principle wins out over others when the normative interest group behind it is able to overcome competitors. I specify the legal "power resources" that make them more or less successful.

According to DiMaggio and Powell, "once disparate organizations in the same line of business are structured into an actual field…powerful forces emerge that lead them to become more similar to one another" (p. 65). A practice may be adopted by an organization initially because it serves some functional need for that organization. But "as an innovation spreads, a threshold is reached beyond which adoption provides legitimacy rather than improves performance." DiMaggio and Powell term this process isomorphism, "a process that forces one unit in a population to resemble other units that face the same set of environmental conditions" (66).

Here I focus on an additional ideational mechanism: *legal contestation*. Law is distinct from other policy areas in that it is, by nature, a system of normative principles. While there are many sources of law (governments, international institutions, common law, customary law, etc.), legal experts are tasked with interpreting these ideas and finding the "correct" solution for a particular case or class of cases. To what extent private disputes can and should be heard in private tribunals, and to what extent the decisions of such tribunals are authoritative, are crucial questions that lawyers have sought to answer within the terms of law. We thus need a social scientific theory of how some legal principles come to trump others.

Finally, the ideational explanation requires other actors—firms and governments—to defer to legal experts. Scott and Blackman (1990) argue, "…the professions rule by controlling belief systems. Their primary weapons are ideas. They exercise control by defining reality—by devising ontological frameworks, proposing distinctions, creating typifications, and fabricating principles or guidelines for action" (p. 290). Perhaps no profession has been as successful at claiming autonomy by virtue of expertise as the legal profession. Both firms and policymakers delegate significant autonomy to lawyers to decide what is and is not allowable. For the rationalist, such delegation, even though it may result in slack, is an efficient use of technical expertise. A strong version of the ideational argument, in turn, would posit that firms and policymakers defer to lawyers because they seem them as legitimate authorities, no matter what the material consequences of such deference. Here I employ a weaker version of this claim, arguing that firms and policymakers are especially likely to delegate to legal experts when they do not know how alternative institutional arrangements are likely to bear on their interests. Because uncertainty is high in the realm of transborder dispute resolution, this more moderate ideational argument is justified.

In sum, we can define the transnational legal networks hypothesis as:

H4 Legal networks*: States will delegate authority to private bodies when policymakers defer to the expertise of legal practitioners who belong to an organizational field that sees private arbitration as normatively desirable. Epistemic*

communities of arbitration advocates, engaging in processes of legal contestation, are the chief vehicles through which such norms are transferred.

From the above we can also discern an additional ideational hypotheses, complementary but distinct. Many authors attribute the growing prominence of private dispute resolution institution to the neoliberal turn of the 1980s and 1990s. Indeed, this shift has been cited as a prominent driver of the expansion of private governance generally. We therefore should test whether indicators of neoliberal ideology are associated with delegation to private tribunals.

H5 Neoliberalism*: Common ideological shifts amongst policymakers and legal experts toward norms of privatization and market solutions will lead to delegation to private bodies.*

Below I test these theories against the record of treaty negotiations and the subsequent ratification of the NYC. Note that while all the hypotheses apply to the latter analysis, neither H3 nor H5 apply to the negotiation process.

5. Negotiating the NYC

This section describes and explains the negotiations that led to the 1958 New York Convention, relying on historical and archival sources, including the treaties' *travaux preparatoires*. First, consider the observable implications of the hypotheses listed above. These implications relate both to the conditions that must apply for a certain hypothesis to hold, and to the processes that reflect the mechanisms through which a hypothesis operates. Support for both must be found in the data before a hypothesis can be confirmed.

H1 Domestic politics. Importers and exporters must be able to make credible commitments to their foreign partners for transborder commerce to occur. If the states' courts are inefficient or inhospitable to foreign parties, such commitments are difficult to make. Therefore, we should expect trade-dependent economic interests within a state to push that state to defer to arbitral bodies, especially when domestic courts are weak or inefficient. In turn, when pro-trade interests dominate a government, we can expect that government to push for, and accept, multilateral recognition of arbitral authority. The key explanators are thus the preferences of dominant domestic interest groups and the characteristics of domestic courts. If this hypothesis is correct, we should expect to observe trade-dependent interest groups lobbying the government for pro-arbitration policies, particularly when judicial institutions are weak. When such groups are seen to obtain their desired preferences across a range of policy dimensions (e.g. tariffs), we should also expect them to succeed in lobbying for arbitration. Countries where such interests are dominant should be seen to lead the negotiating process. Where delegation impinges on the interests of other groups, e.g. firms that benefit from local protectionism, or lawyers or judges vested in public courts, we should expect to see domestic political contestation.

H2 International politics. Just as pro-trade interests in H1 want their own state to help them make credible commitments, they also require their foreign partners to have this capacity. This means that trade-dependent groups will wish the home states of

their trading partners to delegate authority to private tribunals, particularly when those states' court systems are weak or inefficient. We should therefore expect states dominated by such interests to push for international delegation to private arbitration. The conditions for this hypothesis are the same as for H1, with the added explanators of a) the quality of courts abroad, and b) the relative bargaining power between states. We should therefore expect arbitration treaties when *strong* states are the ones meeting the conditions set out in H1, and when the pro-trade interests in those strong states are particularly exposed to the weak or biased courts abroad. We should also expect to see pro-arbitration states using various forms of diplomatic pressure to compel other states to join an arbitration regime, and to seek alternatives—e.g. bilateral treaties—when multilateral efforts stall.

H4 Transnational legal networks. This hypothesis differs from those proceeding, although it also sees interest groups as the chief agents of change, in that it places causal weight on specialized knowledge and the social prestige it enjoys. Several observable implications follow. First, we should expect policymakers to evince little knowledge of dispute resolution, and to actively seek the input of experts. Second, we should not observe significant political conflict (as we would under H1 and H2) over the distributional implications of dispute resolution policy recommended by experts, either at the domestic or international levels. Instead, we would expect states to adopt the experts' views with little acrimony or modification. Third, we would expect, as evidence of the experts' prestige, policymakers to defer to them in other issue areas as well. Fourth, we expect policymakers to justify policy with reference to expertise.

Table 3: Hypotheses, explanators and observable implications for treaty negotiation

Hypotheses	Chief explanators	Observable implications
H1: Domestic politics	1. Preferences of dominant domestic interests groups 2. Policy and efficiency of domestic courts	1. Pro-trade groups lobby government for delegation, especially when courts are weak 2. Resistance from firms benefiting from local protectionism, or from legal elites vested in public courts
H2: International politics	1. Those listed for H1 2. Strength and efficiency of foreign courts 3. Relative power of states	1. Those listed for H1 2. Treaties result when strong states are pro-arbitration, not weak states 3. Pro-arbitration states apply diplomatic pressure to recalcitrant states 4. Contestation in diplomatic fora 5. National governments initiate treaty proposals
H4: Legal networks	1. Strength and scope of legal fields 2. Norms dominant within a field 3. Policymaker uncertainty over cost/benefit of institutional alternatives) 4. Prestige of experts amongst relevant policymakers	1. Little knowledge amongst policymakers about policy 2. Absence of dissenting viewpoints and contestation over policy 3. Adoption of experts' views with little alteration 4. Policymakers defer to same experts in other areas 5. Experts initiate treaty proposals

Background

Before examining the individual hypotheses, it is useful to briefly review the sequences of events and key actors surrounding the negotiation of the NYC, as well as its content (i.e. the target to be explained).

The New York Convention was not, in fact, the first multilateral convention to deal with the enforceability of private arbitral awards. During the 1920s, two treaties were negotiated under the auspices of the League of Nations' Economic Committee,[10] the 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention Relating to the Enforcement of Foreign Arbitral Awards.[11] Their genesis can be traced to the formation of the International Chamber of Commerce following the first world war, which was itself the outcome of the Congresses of Chambers of Commerce and Commercial and Industrial Organizations, a series of business conferences begun in the late 19th century.[12] Treaties guaranteeing enforcement of private arbitral awards could also be found in Latin America (e.g. the 1891 Montevideo Convention, part of an inter-American arbitration system), and in numerous bilateral arrangements. However, none of these treaties ever gained the breadth of ratification to fulfill their central aims, and, overtaken by the Great Depression and World War II, arguably never got a chance to do so.

After the war, then, the patchwork of the Geneva treaties, the inter-American system, and various bilateral deals had left the enforcement of arbitral awards uncertain across much of the world (Nussbaum 1942). As the Geneva treaties were ratified and their implementation worked out in courts, three weaknesses became particularly apparent (Lorenzen 1935; Nussbaum 1942; Van Den Berg 1981; Born 2009). First, the treaties limited enforcement to awards made in a signatory country (or, in some jurisdictions, under the laws of a signatory, or by legal persons under the jurisdiction of a signatory). Awards rendered in countries that had not signed (e.g. the United States) thus lacked standing under international law. Second, in many places the Convention was interpreted to mean that an award had to be judged "final" in its place of origin before it could be enforced abroad. By requiring an additional encounter with a court, this "double exequatur" requirement reduced efficiency. Last, many courts believed that the treaty allowed them to review the process through which an award had been

[10] This body has not been the subject of significant study by political scientists, but represents a fascinating and early mix of state, intergovernmental, and private authority, in many ways presaging the transgovernmental and hybrid networks that currently play a major role in global economic governance. An economic committee was not envisioned in the original League Charter, but rather suggested by the economic section of the League Secretariat in 1920,that is, by the international civil servants responsible for advising the League on economic matters. Though nominally independent, the experts on the Economic Committee (EC) were often senior civil servants from ministries related to economic affairs. Appointments were made by the League's Council, and so the EC's members came most often from those governments, as well as smaller, typically European countries. Interestingly, the United States, despite not being a member of the League, found some representation on the EC through the appointment of "independent" experts such as representatives of the various American chambers of commerce based in European capitals (Clavin and Wessels 2005).

[11] Indeed, there have been other multilateral treaties at the regional level that speak to the issue (the first being the 1891 Montevideo Convention), and numerous bilateral treaties.

[12] I have studied these issues elsewhere. For an historical overview, see Ridgeway, G. L. (1938). Merchants of Peace: Twenty Years of Business Diplomacy through the International Chamber of Commerce. New York, Columbia University Press.

granted and reject awards that did not meet some minimum process requirements under national law.

While these issues did not appear on policymakers' agendas during the interwar period, they continued to be a subject of interest and study for the arbitration community. The International Law Association discussed the issue at conferences in Vienna (1926), Warsaw (1928), New York (1930), and Budapest (1934), focusing on refining procedural rules for private tribunals (UN Doc. E/CONF.26/4, p. 17).[13] Other legal groups were also working on the question at the global level, including the International Association of Legal Sciences, the Society of Comparative Legislation, and the Union Internationale des Avocats.

On the crucial question of enforcement, however, the institutional locus shifted from the League's Economic Committee to the newly created International Institute for the Unification of Private Law (UNIDROIT), a League-affiliated intergovernmental organization headquartered in Rome. [14] Founded in 1926, UNIDROIT, Like the League's Economic Committee, had (and continues to have) a hybrid governance structure. Though ultimate authority rests with an Assembly made up of one representative of each member state, much of the actual decision-making takes place in the Governing Council, a body of 25 elected private individuals, typically judges, practitioners, academics, and former civil servants. But unlike the Economic Committee, which focused on economic policy broadly conceived, UNIDROIT was entirely dedicated to harmonizing the laws governing the rights and duties of private legal persons, including firms, and the relations between them.

This mandate shaped UNIDROIT's work on arbitration. In the late 1920s the organization commissioned an expert to study the state of arbitration laws around the world, and in 1932 decided "an attempt at unification might well be made" (UNIDROIT 1940, p. 2). A committee of experts was nominated, which, seemingly untroubled by the Depression or the return to war, met several times throughout the 1930s. A draft Uniform Law on Arbitration in Respect of International Relations of Private Law was issued in 1940. This extensive document proposed a radically new approach to arbitration that broke both from the ICC's vision of a minimal, contract-based procedure with substantial deference from national courts and from the "sovereigntist" position of national control over foreign awards. Instead, UNIDROIT proposed significant judicial oversight of arbitration, for example, by requiring awards to be approved by a public judge before becoming binding on the parties. At

[13] This body has not been the subject of significant study by political scientists, but represents a fascinating and early mix of state, intergovernmental, and private authority, in many ways presaging the transgovernmental and hybrid networks that currently play a major role in global economic governance. Though nominally independent, the experts on the Economic Committee (EC) were often senior civil servants from ministries related to economic affairs. Appointments were made by the League's Council, and so the EC's members came most often from those governments, as well as smaller, typically European countries. Interestingly, the United States, despite not being a member of the League, found some representation on the EC through the appointment of "independent" experts such as representatives of the various American chambers of commerce based in European capitals Clavin, P. and J.-W. Wessels (2005). "Transnationalism and the League of Nations: Understanding the Work of Its Economic and Financial Organisation." Contemporary European History **14**(4): 465-492..

[14] UNIDROIT was "re-founded" in 1940, following the demise of the League, via the UNIDROIT Statute.

the same time, they proposed detailed rules to govern how national courts should render such decisions, and suggested making those public judgments—not the awards themselves—universally enforceable. The result would have been an internationally standardized form of "supervised" arbitration driven by public judges claiming universal jurisdiction. While parties would have retained the ability to amend the arbitral procedures as they wished, judges would have the final say on what was and was not allowed (UNIDROIT 1940).

The difference between this system and the ICC's goals were made clear in the consultative sessions held between the ICC and UNIDROIT in 1935 and 1936.[15] Still, UNIDROIT's draft of the model law remained unchanged throughout this period. Nor did the ICC, when it returned to the issue of dispute resolution after WWII, seem particularly influenced by UNIDROIT's efforts. The issue of dispute resolution first reappeared on the ICC's agenda in 1949 at its International Congress in Quebec. Noting that "international uniform legislation aimed at simplifying recourse to arbitration would greatly contribute to a wide-spread use of arbitration procedure," the ICC declared, "As long as the laws governing arbitration vary form one country to another, there will be uncertainty as to the validity of arbitration clauses and the possibility of enforcing arbitral awards in a foreign country" (ICC 1949, p. 85). The next year the Chairman of the ICC's arbitral tribunal launched his own study of the state of arbitral award enforcement, concluding that that it was inadequate for the needs of modern commerce (ICC 1953, p. 6). And at the next congress of the Chamber, meeting in Lisbon in 1951, the ICC explicitly called for a new treaty, albeit somewhat cautiously, after a period of further study:

> "The ICC welcomes a continuation of studies for the unification of arbitration laws in all countries, on the basis of the draft proposed by the International Institute for the Unification of Private Law [UNIDROIT], but recognizes the complexities and difficulties of the subject. The ICC considers that pending completion of these studies an immediate effort should be made (whether by amendment of the Geneva Convention of 1927 of by a new Convention) to remove the main defect which militates against the effectiveness of international arbitration and to permit the immediate enforcement of international arbitral awards. The ICC calls on all governments concerned to cooperate towards that end." (ICC 1951, p. 75)[16]

The ICC formed a large committee to study the subject, composed of a number of prominent legal experts and businessmen (ICC 1953, reprinted as UN Doc. E/C.2/373). In 1953 this committee, now forcefully advocating a strengthening of arbitration's legal standing, proposed a draft convention that would have moved significantly beyond the Geneva treaties, giving parties more or less complete freedom to design arbitration as they wished.[17] Unlike UNIDROIT's judge-centric

[15] I have not had access to these documents, so cannot say for certain.

[16] The ICC further noted that greater coordination amongst private arbitral tribunals might help to make international arbitration more consistent in the meantime, pending legal convergence (ICC 1951, p. 75).

[17] The final report stated, "The ICC is here simultaneously pressing for the full application of the already existing Geneva Convention of 1927 and for the elaboration of a new more effective international instrument based on a draft it has itself already prepared" (ICC 1953, p. 25).

system, the ICC placed ultimately authority on the will of the parties and the contract. This position was self-consciously radical, though the ICC characterized it as representative of emerging, though still controversial legal norms:

> "Legal circles have until recently shown a marked opposition to recognizing autonomy of the will as a valid source of private international law which, being ideally the science of conflict of laws, presupposes that all legal relationships are subject to some national law. But at the same time, it would be hard to imagine the sense of frontier and of sovereignty disappearing, economically to start with and later politically, without the simultaneous establishment of international forms of procedure along similar lines. Furthermore, it should be pointed out that at the very moment when a supposedly scientific approach is tending to repudiate autonomy as a source of law, the texts of conventions (and in particular the Rome Institute's Draft Uniform Law) are emphasizing in many cases that the provisions set forth will only be valid if the parties have not arranged otherwise, thus confirming the autonomy of the will." (ICC 1953, p. 8).

The next year the ICC submitted its proposal to the UN's Economic and Social Council (ECOSOC) as part of the Council's consultations with non-governmental organizations (UN Doc. E/SR.756, p. 5). It does not appear that simultaneous attempts were approach national governments. A representative of the ICC addressed ECOSOC directly, calling on the governments to form an expert committee to study the prospect of a new convention (UN Doc. E/SR.761, p. 30). This proposal was unanimously approved (UN Doc. E/SR.763, p. 39), and in March 1955 a committee of eight representatives met to review the ICC's proposal, as well as the comments that member states had offered on it (E/AC.42/1). They ultimately decided to draft their own convention, and submitted a report recommending that ECOSOC convene a conference to negotiate a treaty along the lines the committee had suggested (UN Doc. E/AC.42.4).[18] The committee's draft differed substantially from the ICC's proposal, placing far more emphasis on judicial oversight and national law.

ECOSOC accepted the sub-committee's proposal and set up an international conference to negotiate a final convention. The United Nations Conference on International Commercial Arbitration met in May and June of 1958 (UN Doc. E/CONF.26/SR.2 to UN Doc. E/CONF.26/SR/24, inclusive). Forty-three nations attended, with the Dutch representative presiding. Also represented were three IGOs (the Hague Conference on Private International Law, UNIDROIT, and the Organization of American States), as well as a number of legal and commercial NGOs, including the ICC. (UN Doc. E/CONF.26/8/Rev.1). After several weeks of negotiation, the final text of the New York Convention was adopted 35 to zero, with 4 abstentions (UN Doc. E/CONF.26/SR/24, p. 10). It represented a compromise between the ICC's position and the sovereigntist emphasis on judicial control and national law. UNIDROIT's view of quasi-supranational universal public jurisdiction was not even debated.

[18] The committee included representatives of Australia, Belgium, Ecuador, Egypt, India, Sweden, the USSR, and the United Kingdom. Also represented were the IMF and UNIDROIT, as well as the International Law Association and the ICC.

Let us turn now to the hypotheses discussed above.

Rationalist theories: H1 and H2

I discuss these hypotheses together because their observable implications largely overlap. A survey of the basic conditions required for H1 and H2 indicates that the interests of powerful economic actors and states favored delegation to arbitration.

First, it is clear that the major postwar corporations believed arbitration to be in their interests. This is reflected in the activism of the ICC, but also, importantly, in the active participation of large firms in the drafting of the ICC's proposed convention. On the ICC's Committee on International Commercial Arbitration we find senior executives from Shell, Borax, Unilever, and Dunlop (UN Doc. E/C.2/373).

Second, statements made at the UN conference and in the surrounding ECOSOC meetings indicate that virtually all major states believed private arbitration should play a predominant role in transborder commercial disputes. Indeed, this consensus bridged geopolitical divides. The advanced democracies were perhaps most enthusiastic. The US representative to ECOSOC declared his delegation "in complete sympathy with the ICC's objectives," and noted that the United States had included arbitration-enhancing provisions in several of its bilateral commercial treaties (UN Doc. E/SR.756, p. 8). The French delegate stated, 'It was obviously logical and in fact essential" that arbitral awards be enforced abroad (UN Doc. E/SR.761, p. 31), and the United Kingdom "recognized the importance of the principle of arbitration" (UN Doc. E/SR.761, p. 32). During the conference, smaller wealthy trading states like the Netherlands, Belgium, Switzerland, and Israel were particularly vocal supporters of arbitration.

More surprising was the strong rhetorical support for arbitration found in the Third World. The Indian delegate "welcomed the ICC draft convention as a promising means of settlings [trade] disputes" (UN Doc. E/SR.761, p. 31). Ecuador echoed the ICC, arguing that "arbitration provided modern international trade with the flexibility and rapidity it needed" (UN Doc E/CONF.26/SR.2, p. 9). The Turkish representative implored countries not to seek to adapt the convention to their national laws, but rather to update national laws to conform to the new pro-arbitration rules (UN Doc. E/CONF.26/SR.4, p. 8). The Argentine delegate stated that his "Government attached particular importance to arbitration as a means of settling international commercial disputes," declaring the Geneva treaties "no longer adequate" (UN Doc. E/CONF.26/SR.5). And both Costa Rica and China (Taiwan) "stressed the importance of international commercial arbitration to the under-developed countries" (UN Doc. E/SR.1059, p. 74).

The socialist countries were equally supportive. While perhaps surprising, prima facie, this support reflected long-standing Soviet reliance on arbitration to handle international trade both within Comintern and without. Indeed, East-West trade was almost entirely reliant on private arbitration, sine neither side could feel confident in the other's courts (Holtzmann 1979; Chew 1985). The Soviet representative noted his nation's extensive reliance on the practice in his opening remarks (UN Doc. E/CONF.26/SR.5). Czechoslovakia bragged that its "Chamber of Commerce had an arbitral tribunal, an established institution possessing great experience, which was

playing an increasingly important part in the nation's commercial life" UN Doc. E/CONF.26/SR.4, p. 5-6). And Poland spoke directly to the relation between geopolitics and arbitration, arguing,

> "the present division of the world into two great economic and social systems made it particularly important conclude an international convention on arbitration. Trade between countries belong to those two systems had increased rapidly during the past few years, and a concomitant increase was to be expected in the number of disputes" (E/CONF.26/SR.4, p. 6).

The basic explanators favored by H1 and H2 were therefore conducive toward delegation. However, despite these favorable conditions, we fail to observe the process-related implications of either hypothesis. First, there was a conspicuous absence of interest group lobbying at the domestic level. The years preceding the Geneva treaties saw significant lobbying on the part of pro-arbitration interests at the domestic level. National anti-arbitration laws were overturned in France and the United States, and governments that already granted significant autonomy to private tribunals, like Britain, were asked by commercial lobbyists to seek international agreements extending those policies. In the 1950s, in contrast, we notice a near absence of similar interest group activity. In all the major trading economies, national laws were largely deferential to domestic arbitration,[19] and so international efforts could not "piggyback" on domestic lobbying efforts, as they had, for example, in the United States. The ICC seems to have believed that ECOSOC, not national governments per se, was the best target of its advocacy.[20]

Reinforcing the lack of domestic political movements surrounding the New York Convention, the issue seemed less salient in the 1950s than in the 1920s. The Geneva conventions received detailed coverage in major papers across the world. The New York Convention, in turn, was hardly mentioned. In the United States, for example, it received only a passing mention on p. 51 of the New York Times on November 30, 1960.

Nor do we see evidence of state-to-state lobbying around the NYC negotiations. My investigation of the diplomatic archives of the major players remains ongoing, but so far has not uncovered *any* evidence that states lobbied one another outside of the ECOSOC negotiations. Given that other important elements of the institutional architecture are regular subjects of diplomatic exchange (consider, for example, the debates surrounding the establishment of the Bretton Woods system in the previous decade, or the New International Economic Order in the 1970s), this negative finding suggests a lack of support for H2.

H4: Legal networks

[19] For a contemporary survey, see ICC (1964). Commercial Arbitration and Law throughout the World. Paris.

[20] In presenting the Council with his proposal, the representative of the ICC stated, "It was obvious that under Article 62 of the Charter, the Economic and Social Council was the only organ before which the matter could properly be placed, and it was therefore to the Council that the ICC was submitting its proposal" (UN Doc. E/SR.763, p. 8).

Instead, strong support is found for the epistemic explanation. The conditions for it are readily identified. First, as in the 1920s, there was a clear group of arbitration experts seeking to influence policy. Indeed, this group had expanded significantly over the intervening decades, stretching beyond the ICC and the EC to include private legal organizations like the International Law Association, the International Association of Legal Sciences, the Society of Comparative Legislation, *Union Internationale des Avocats*, and the inter-American organizations, amongst others. UNIDROIT, the Organization of American States, and the Council of Europe were also proposing or had enacted international law regarding arbitration. While business groups had clearly dominated the arbitration community in the 1920s, legal groups had become increasingly active since.

Second, we observe uncertainty amongst policymakers, evidenced primarily in their continued reliance on expert committees. Even arbitration advocates recommended proceeding cautiously. When the ICC submitted its draft convention to ECOSOC in 1954, it did so only as "a basis for further consideration in the drafting of a final convention" (UN Doc. E/SR/761, p. 30), calling on the Council to form a committee to study the topic. The ICC sought to frame the issue as a purely technical one, asking the member states to move ahead on the basis that "the principles and objectives of arbitration were so generally recognized and accepted that all governments could support the proposal for such a study," even if there remained "differences of opinion about some of the technical provisions" (UN Doc. E/SR.761, p. 30). Governments seemed largely to accept this statement (as the approving comments regarding arbitration cited above suggest), though some (e.g. Cuba, Venezuela, Egypt) were careful to note that the opinions of national governments ought to be consulted by the experts. However, this point underscored the lack of knowledge on the topic amongst policymakers, since it prompted the UK delegate to note frankly that "the problem of the enforcement of international arbitral awards was very complex and governments would have to conduct lengthy consultations, on the issue in general and on the ICC draft convention, with legal experts and trade organizations before they could express any definite opinion" (UN Doc. E/SR.761, p. 32). Little controversy arose at the meeting where ECOSOC unanimously adopted the ICC recommendation and form a study committee. Perhaps the delegates were persuaded by the Belgian delegate's argument that "The fact that the item had been sponsored by an organization with the prestige of the ICC was a sufficient guarantee of the importance of the question" (UN Doc. E/SR.761, p. 30).

The expert committee did not meet until the following year, and declared its non-political nature at the outset. Though made up of eight national representatives (from Australia, Belgium, Ecuador, Egypt, India, Sweden, the USSR, and the UK), the committee saw itself as essentially technocratic, introducing its report with the following disclaimer:

> "In view of the technical nature of the subject matter, the members of the Committee while being aware that they had been appointed as Government representatives, considered themselves as acting essentially as technical experts with the understanding that the views expressed by them in the course of the Committee's deliberation would not necessarily constitute the positions of their respective Governments." (UN Doc. E/AC.42/4, p. 4).

These non-representative representatives were joined by individuals from the International Monetary Fund (who left after one meeting), UNIDROIT, the ICC, and the International Law Association. After a few weeks of deliberations, the Committee resolved to call for a conference aimed at drafting a new convention on international arbitration, and proposed a draft text on which the discussions might build.

But despite this technical orientation, the Committee's draft convention differed significantly from the ICC proposal and UNIDROIT's model law. It afforded more leeway to national arbitration procedures, and enhanced the role of courts by requiring an award to be effective in the country where it was issued before it could be enforced abroad. How, then, should we evaluate the condition required for I4, which holds that policymakers should uncritically accept experts' views? The final outcome, the New York Convention, also differs from the ICC's draft, and the treaty's *travaux preparatoires* show extensive debates over nearly every word. Is this not, then, evidence of intergovernmental bargaining more in line with H2?

An examination of the content of these deliberations suggests otherwise. The convention certainly featured debate, but the terms of the debate were, as the statements quoted above suggest, predominantly *legalistic* in nature. At no point was the general utility of private arbitration as a policy matter, in dispute. Nor were abstract arguments about the proper relationship between private and public authority important. Rather, controversy arose over how best to achieve delegation to private authority in a world of varied legal systems. Delegates worried that if the convention departed too radically from the accepted legal norms of their home states, national courts would reject it. The conference, in other words, more closely resembled a legal seminar than, say, a trade round negotiation.

The central controversy revolved around the extent to which arbitration could be bound to certain procedures by national laws, and how much of a role public courts would play in ensuring the quality of arbitral proceedings (Haight 1958; Van Den Berg 1981). Recall that the ICC advocated arbitration constrained only by the will of the parties, enforceable globally with a single, pro-forma visit to court in the country where the award would have effect. The ad hoc committee draft, in turn, gave a role to national laws in deciding what arbitration must look like, and would have required, potentially, public courts to approve both when an award was rendered and when it was enforced.

Italy was a strong advocate of the latter, sovereigntist position, stating

> "At the present time, there was no possibility of securing acceptance of a solution founded solely on the principle of contractual autonomy, in which the law would be relegated to a secondary position…courts could hardly be expected to have confidence in an award which had not been made within the framework of a legal system…absolute liberalism was a thing of the past…if the Convention was [sic] to be ratified by a greater number of States than the 1927 Geneva Convention, it would be necessary to eschew unduly revolutionary solutions whose acceptance would be impeded by the conservatism of jurists." (UN Doc. E/CONF.26/SR.2, p. 7).

France represented the opposite opinion, arguing that "international arbitration could not be truly effective unless there was a greater emphasis on the principle of freedom of contract" (UN Doc. E/CONF.26/SR.2, p. 3-4). Further, the French delegate disagreed with the Italian delegate's "anxieties" over the conservative nature of jurists. Other countries split along similar lines, with the Netherlands, Switzerland, Israel, and several others taking the French side, the United States, Belgium, and several Latin American countries siding with the Italians, and many delegations seek to craft a compromise between them. This debate lasted some three days, with the final compromise reducing the grounds on which an arbitral award could be invalidated, but keeping open the prospect of judicial review in both the jurisdiction of origin and that of enforcement, though the latter was not expressly required for the former to proceed.

Strikingly, this debate over autonomy does not seem to have conformed to any differences in policy. Note, for example, that the principal antagonists in the debate *all* delegated high degrees of autonomy to arbitral awards both foreign and domestic. Rather, the delegates argued in terms of what was the correct legal principle. Sovereigntists were primarily concerned with ensuring that that outcome would be sufficiently compatible with their domestic legal system to allow for ratification. Supporters of a purely contract-based system, in turn, believed, following the ICC, that trade could best be encouraged by removing all possible constraints on the will of the parties. This pattern was repeated in debates over other questions, for example, regarding the conditions under which an arbitral agreement could be considered invalid, or how the convention might apply to federal countries (Haight 1958).

Further evidence for the legalistic nature of the debate can be found in the uncertainty and confusion that sporadically interrupted the proceedings. Delegates often used words in different ways (e.g. "exequatur"), or interpreted the same phrases to have different legal implications. Delegates would occasionally make a proposal only to be told it would in fact have the opposite effect of what they said they intended, prompting the delegate to retract his proposal (Haight 1958). The tone of the proceedings was therefore often more of joint problem-solving than of bargaining.

In sum, though the New York Convention was born in a process of contestation, it was *legal* contestation. The *travaux preparatoires* read more like the preparatory meeting of an epistemic community than an intergovernmental bargaining process.

6. Adoption of the New York Convention

Despite the policy consensus around the 1958 conference, acceptance of the New York Convention—a proxy for the diffusion of delegation to private authority generally—was gradual. A decade after it was opened for signature, the NYC had only come into effect in 34 countries. The following decade, 20 more countries joined, with 23 more in the decade after that. During the 1990s a tipping point was reached as 50 countries joined within a 10 year span, and in the last decade 20 more brought the total membership to 146, nearly the same as the WTO (see figure one). What explains this steady spread of delegation to arbitration over the last 50 years?

6.1 Model

The key variation in the dependent variable is the time it took a country to join the NYC. The appropriate regression technique is therefore survival analysis, which allows us to compare the effect of different factors on the "risk" that an event occurs, in this case, the ratification of the New York Convention. Here I employ a Cox proportional hazards model, which makes no assumptions about the baseline hazard model (i.e. it does not assume that ratification follows some innate logic independent of the explanatory variables). Importantly, this type of regression accounts for the dynamic nature of causality, allowing for the possibility that the effect of a causal variable on ratification in 1959 will not be the same in 2008. The basic form of the model can be expressed as:

$$h(t_i) = h_0(t) * \exp(x_i\beta)$$

where t_i is the duration before ratification for country i, x_i is a vector of independent variables, and β represents their corresponding coefficients. The left hand side of the equation $h(t_i)$ is thus the probability that i will join the NYC if it has not already.

The data form a panel of country years including the 194 independent states identified by the Correlates of War project from 1958 to 2008 (the panel is unbalanced, as some countries enter and exit the international system during this period). The dependent variable is thus the number of years between when a country could potentially adopt the New York Convention (i.e., 1958, or the country's first year of existence and sovereignty over foreign economic policy) and the date of ratification. Countries that never join are treated as censored in the final year of the panel.

6.2 Hypotheses

First consider some of the existing explanations for the spread of other international economic institutions. Four main theses can be identified.

H1: Domestic politics

Studies of trade agreements have emphasized how domestic political conditions affect the likelihood of international cooperation (Milner 1997; Maggi and Rodriguez-Clare 1998; Grossman and Helpman 2002; Mansfield, Milner et al. 2007). These studies confirm the basic intuition that when pro-trade interest groups rise to power, cooperation is more likely. However, they also highlight how domestic political institutions (like regime type or the number of veto players) systematically condition interest group politics. Mansfield et al. (2007), for example, show how the presence of veto players reduces the likelihood that a county will form PTAs.

A similar logic may apply to dispute resolution. The more powerful trade-oriented interest groups are, the higher the likelihood that a country will ratify the NYC. Empirically I represent the power of trade interests by the openness of the economy, meaning the share of exports and imports in a country's GDP. When this is high, we may expect interest groups to advance pro-trade measures in domestic political arenas, including pressing ratification of the New York Convention. As Mansfield et al. (2007) show in the case of PTAs, such efforts are constrained by the strength of

veto players in domestic politics. I therefore test if these domestic constraints also block ratification of the Convention (Henisz 2010). Last, because we would expect this logic to apply more vigorously in countries with political systems open to interest group pressures, I consider regime-type (as measured by the Polity IV data).

H2: International politics

Other studies of trade have found that economic institutions depend less on the material interests of firms and the political institutions that channel them, and more on the politics of inter-state relations. Security interests may thus trump simple economic goals (Gowa 2010). With regard to WTO accession, Davis and Wilf (2011) find, surprisingly, that WTO membership is driven more by geopolitical factors (such as alliances and UN voting similarity) than by trade openness.

Could similar dynamics drive NYC membership? As we have seen above, support for the NYC spanned the principal geopolitical divide of the period under study, so we would not expect alliance patterns to be as important as, for example, they are for the WTO.[21] Rather, given that all developed economies supported arbitration, we would expect to see geopolitical pressure being applied, if at all, onto more peripheral members of the global economy. I thus consider (as Davis and Wilf do), if countries that are particularly vulnerable the usual levers of economic pressure are more likely to join the NYC. First I consider whether or not a country is negotiating to join the WTO, as these processes are an important opportunity for established trading powers to condition the terms on which an applicant will participate in global trade. I also consider the same variables Simmons et al. use to measure coercion, including whether they are beneficiaries of IMF credits or concessional lending.[22]

H3: Competitive and cooperative diffusion

The literature on diffusion highlights a range of causal mechanisms, both material and ideational. Regarding the former, we might expect countries that trade more with NYC member states to become more likely to sign the agreement themselves. The mechanism may be purely informational, as firms from member states seek to educate their counterparties about its benefits. Alternatively, if we assume that treaty members' firms are more likely to prefer arbitration, we might expect them to push their suppliers and customers to follow suit. To test this dynamic, I look at the proportions of a country's imports that come from NYC members, and the proportion of its exports that go to NYC members. The higher the trade with NYC members, the more likely we should expect ratification to be.

Diffusion may also be competitive. Simmons and Elkins (2004) and Elkins et al. (2008) find that countries that are competitors for the same FDI or foreign markets often adopt similar policies. Here I test that idea by looking at trade connections. Do countries whose competitors—as measured by the similarity of their trade profiles—join the NYC also do so? To determine similarity I generate a spatial lag variable

[21] Indeed, a version of the model including alliance similarity with the US and with the Soviet Union yielded no significant results.

[22] The model reported does not include the amount of development assistance a country receives as a measure of its vulnerability (as Simmons et al. do), as doing so reduces the number of observations significantly.

modeled on those used by Simons and Elkins, which has the general form Wy*. W is an N by N by T matrix that measures the "distance" between each country and all the others for each year. This "distance" is measured in exports, so if two countries sell exactly the same value of goods to exactly the same countries in the same year there would be no "distance" between them. I calculate the correlation (Pearson's) between each country's trade profile (a vector of their exports to each other country) with every other country's trade profile in each year. These values, which range from 0 (no correlation) to 1 (perfect correlation), populate W, which represents how much any two countries compete in the same export markets. In turn, y* is an N by T matrix whose elements are 1 if country *i* is a member of the NYC in year *t* and 0 otherwise. By summing across years, Wy*, then, provides a value for each country in each year equal to the number of other countries in the NYC weighted by how closely those countries share country *i*′s export markets.[23]

Finally, diffusion may occur through ideational channels. The existing literature on diffusion explores how common language, religion, or other cultural or identity-based variables (Simmons and Elkins 2004), or common membership in intergovernmental organizations (Cao 2009), lead countries toward policy convergence. I therefore test the effect of cumulative NYC ratifications amongst a country's language peers, as well as common membership in the various intergovernmental organizations relevant to dispute resolution: UNIDROIT and UNCITRAL.

H4: Transnational Legal Networks

Finally, we would like to test the ideational argument that an epistemic community of experts, advocating a norm of arbitration within their legal fields, has played a strong role in the practice's diffusion. This is another hypothesis that does not lend itself easily to large-N analysis, since precise proxies for the scope and extent of legal fields and epistemic communities are difficult to imagine. Still, some variables might be considered. First, some of the general ideational diffusion variables discussed above can also be considered proxies for legal fields (common language) and epistemic communities (common international organizations). However, to test the more specific idea that *legal* commonalities and participation in the arbitration community drive ratification, we must consider several additional and more precise variables. I therefore also consider whether countries are more likely to ratify the NYC once other countries with the same legal origin do so, creating spatial weight variables to measure the extent to which a county's legal system peers participate in the NYC.[24] For the same reason, I include a dummy variable to see if being a federal country has an effect on joining. I also consider whether a country has signed the key intergovernmental treaty on investor-state dispute resolution, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Though the treaty (through which states commit to hear investment disputes in the World Bank's International Centre for Settlement of Investment Disputes, of ICSID) deals with a separate policy issue (helping states make credible promises to investors, as opposed to the NYC, which helps firms make credible promises to each other), it

[23] For a more detailed discussion of this type of spatial lag variable see Simmons, B. and Z. Elkins (2004). "The Globalization of Liberalization: Policy Diffusion in the International Political Economy." American Political Science Review **98**(1): 171-189.

[24] Spatial weights for variables that are unchanging categories—like language or legal system—are equivalent to the number of other countries sharing the characteristic that have joined the NYC.

employs a similar institutional technology: arbitration. As discussed above, arbitration lawyers often work in both types of cases, and the topics are linked as a subject of legal study.

H5: Ideology

Several authors have speculated that reliance on private authority represents an ideological shift away from the state and toward market-based governance and private orderings. If this were true, we would expect NYC ratification to be associated with Right-leaning governments and with the privatization of state-owned enterprises. I therefore test the effect of a Right-leaning executive and a Right-leaning legislature on the propensity to join the NYC.[25] I also look at the total amount of state-owned companies that are privatized.[26]

Control variables and model specification.

In all the models I include two country-specific control variables, the size of the national economy (log GDP) and the level of development (GDP per capita).[27] I also employ two of the variables mentioned above (regime type[28] and the openness of the economy to trade[29]) as controls in models where they are not the chief explanators of interest. For each model I cluster standard errors by country to control for omitted country-specific factors that may drive ratification.

Table 1: Summary statistics (not reported for binary variables)

Variable	Obs.	Mean	Std. Dev.	Min	Max
GDP (log)	7161	22.797	2.373	16.595	30.312
GDP / capita	7155	5551.974	11913.630	37.516	186242.900
Regime type	7317	0.433	7.493	-10.000	10.000
Veto players	7633	0.203	0.218	0	0.730
Openness	6774	74.851	46.905	0.309	445.911
Judicial independence	7962	0.447	0.307	0.016	0.989
IMF credit	8417	171m	1060m	0.000	28300m
IMF lending	8417	1.282m	55m	-1730m	1990m
% exports to NYC	7591	0.641	0.335	0.000	1.000
% imports from NYC	7591	0.656	0.322	0.000	1.000
Exp. competitors	7293	168.671	45.468	10.000	300.440
Privatization	5486	0.166	0.741	0.000	14.800
Agr. exports (% merch exports)	5140	7.535	12.339	0.000	93.824
Merchandise trade (% GDP)	6790	59.438	47.358	4.532	986.647
Lang. in NYC	8417	4.098	6.251	0.000	22.000
Legal sys. In NYC	8417	21.688	21.934	0.000	70.000

[25] Data are obtained from the World Bank's Database of Political Indicators.
[26] Data are obtained from IMF.
[27] World Development Indicators.
[28] Polity IV score.
[29] Ratio of trade to GDP, World Development Indicators

5.3 Results

The results are given in table four (n.b. to facilitate interpretation, hazard rates, not coefficients are reported; values above 1 indicate increased risk of joining the NYC, values below 1 indicate reduced risk, and values equal to one indicate the variable has no effect on joining). I estimate a model for each hypothesis. Data limitations for certain variables mean that some models are estimated on smaller subsets of the data than others.

Table 2: Survival analysis of NYC ratification, 1958-2008, hazard rates and standard errors. Hazard ratios are reported. Values above 1 indicate a greater likelihood of joining the NYC more quickly; values below 1 indicate a delay in NYC adoption. * corresponds to a p-value <.10, ** to <.05, and ***<.01.

	1	2	3	4	5
	Domestic interests	Geopolitics	Diffusion	Trans. legal field	Ideology
GDP (log)	1.278***	1.288***	1.203***	1.253***	1.289***
	(0.077)	(0.077)	(0.091)	(0.095)	(0.091)
GDP/capita	1.000	1.000	1.000	1.000	1.000
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Regime type	1.019	1.027**	1.034**	0.991	1.024
	(0.023)	(0.014)	(0.018)	(0.030)	(0.015)
Openness	1.003	1.003*	1.002	0.999	1.004**
	(0.002)	(0.002)	(0.018)	(0.002)	(0.002)
Veto players	1.340				
	(1.046)				
WTO app.		2.229***			
		(0.606)			
IMF credit		1.000			
		(0.000)			
IMF lending		1.000			
		(0.000)			
Exp. to NYC			0.414		
			(0.242)		
Imp. from NYC			1.853		
			(1.000)		
Competitors			1.002		
			(0.005)		
Right exec.					1.302
					(0.499)
Right leg.					0.611
					(0.216)
Privatization					1.069
					(0.120)
Judicial indp.				4.348*	
				(3.611)	
Agr. exports					
Merch. trade					
UNCITRAL			1.532	1.853**	
			(0.426)	(0.484)	
UNIDROIT			1.170	1.378	
			(0.307)	(0.383)	
Lang. group			1.006	0.994	

			(0.022)	(0.022)	
ICSID				1.945***	
				(0.451)	
Legal group				1.019***	
				(0.007)	
Federal				0.529**	
				(0.145)	
Observations	2,779	2,796	2,628	2,779	2,356

None of the models associated with the existing IPE literature present compelling explanations for NYC ratification. Unlike theories of trade liberalization based in domestic politics, regime type, openness, and the presence of veto players have no consistent effect on the proclivity of countries to sign the NYC. H1 assumes that governments learn about, and are motivated to pursue the New York Convention through the lobbying of firms that demand it. But none of features of domestic politics that condition that process seem significant in this case. Though regime type achieves statistical significance in some of the other models, its substantive effect is small, with hazard rates essentially equal to one.

With regard to geopolitics (the second column of table four), applying to join the WTO has a strong positive effect on joining the New York Convention, but the other variables do not attain significance. Still, because WTO applicants must make concessions to the established trade powers, this could be interpreted as evidence for geopolitical maneuvering. Note, however, that this effect would also be consistent with a learning mechanism, in which new members learn what policies are effective for trade as part of the accession process. Such an interpretation would better fit the diffusion mechanism.

The diffusion variables, however, perform quite badly; none of them achieve statistical significance. Given the strong findings on the diffusion of BITs in Simmons and Elkins' work, amongst others', we might expect these variables to be associated with NYC ratification as well. That they are not is particularly striking given that the diffusion variables are fairly "blunt" measurements that are likely to be correlated with a range of causal processes linked to the general phenomenon of liberalization.[30] In other words, we would expect them to be prone to type I errors (false positives). The fact that none achieves statistical significance may therefore be considered additionally weighty.

Equally unsupported is the ideological model. Contra scholars who criticize private arbitration as neoliberal ideology, the two do not seem to be at all correlated. None of the ideology variables attain significance.

Instead, it is the ideational model that finds strongest support. While UNIDROIT and common language do not seem to have significant effects on joining the New York Convention, UNCITRAL membership, ICSID membership, and the participation of other countries in the same legal system do. Moreover, federalism strongly weights

[30] Because both the independent variables and the dependent variables can be considered part of the liberalization "package," diffusion studies must be particularly careful to establish the correct direction of causality.

against joining. The strongest effect, though, is judicial independence, which we may treat as a proxy for the strength of law as an organizational field in a given country.

The findings strongly back H4, and suggest that the logic of dispute resolution institutions is fundamentally distinct from those of the other institutional underpinnings of the global economy.

7. Conclusion

The paper's findings suggest that private dispute resolution institutions play a major role in the day-to-day operation of global commerce. Further, it shows that these institutions have come to play this role through a causal process quite distinct from those associated with other pillars of the global economy, such the WTO, PTAs, or BITs. These findings suggest a number of broader implications.

First, they demonstrate of the benefits of close engagement between rationalist IPE and legal scholarship (Slaughter 1998). The present paper has attempted to take legal arguments seriously by fashioning them as falsifiable hypotheses and testing them against rivals. Its findings suggest our understanding of global political economy would be significantly impoverished without them. At the same time, it highlights the utility of employing a social scientific research design to such ideas.

Second, as global governance evolves to include a broader range of institutions, actors, and processes beyond those envisioned in traditional theories of inter-state cooperation, scholars should expect a wider range of processes and mechanisms to matter for global politics as well. Put another way, given less parsimonious world politics, we should expect theories to be less parsimonious as well.

Finally, the paper highlights the importance of *hybrid* political institutions. Received distinctions between public and private may be overly rigid to accommodate complex regimes like TCA in which the two fuse. Existing work on private governance often emphasizes an institution's distance from public institutions. And while some private governance may indeed be disconnected, scholars should be careful not to reify the "private-ness" of an institution, lest they disregard linkages to public institutions that may include an important part of the causal story.

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