

## Islamic Legal Tradition and the Choice of Investment Arbitration Forums

Morr Link

[morrlink@gmail.com](mailto:morrlink@gmail.com)

&

Yoram Z. Haftel

[Yoram.haftel@gmail.com](mailto:Yoram.haftel@gmail.com)

Department of International Relations  
The Hebrew University of Jerusalem  
Mt. Scopus, Jerusalem 9190501, Israel

September 2019

Forthcoming at the *Review of International Political Economy*

### **Authors' note:**

We thank Lotem Bassan-Nygate, Timm Betz, Enav Birnbaum, Tomer Broude, Asif Efrat, Dan Eran, Emilia Powell, Kyla Tienhaara, participants of a Workshop on Domestic Political Changes and International Agreements held at the University of Haifa (2018) and a workshop on International Economic Agreements held at the Hebrew University (2019), the anonymous reviewers, and the Editors of RIPE for helpful comments and suggestions. We also thank Nir Kosti and Idan Nisani for valuable research assistance.

**Abstract:**

Does domestic legal tradition affect international cooperation and legalization? Recent studies indicate that states with Islamic law tradition (ILT) prefer more informal forums to resolve international disputes, compared to states with other legal traditions. We examine this claim in the context of the increasingly important global investment regime. We argue, specifically, that international investment agreements (IIAs) concluded by ILT states are less likely to refer disputes to the highly legalized and formal Centre for the Settlement of Investment Dispute (ICSID), and are more likely to refer them Islamic forums, which tend to be less formal. Employing new data on forum choice in investor-state dispute settlement (ISDS) provisions in more than 2,600 IIAs and controlling for a battery of alternative explanations, we find substantial empirical support for the theoretical expectations. These findings underscore the significance of domestic legal traditions to international dispute settlement in the Islamic world and beyond.

**Keywords:**

Islamic law states; Legal tradition; International investment agreements; Investor-state dispute settlement; Investment arbitration forums; Legalization

## **Introduction**

Through numerous international organizations, bodies, and treaties, the legalization of the international system is ubiquitous and ever increasing. This trend is most apparent, perhaps, with respect to the global investment regime, which includes more than three-thousands international investment agreements (IIAs), most of them contain provisions that allow for investor-state dispute settlement (ISDS). These mechanisms did not remain on paper, but gave rise to more than a thousand cases of investment arbitration involving many millions, and sometimes billions, of dollars.

ISDS provisions are by no means uniform, however, and vary a great deal on their rules and the forums to which the parties can turn to resolve their disputes. This variation has remarkable implications for the ability of foreign investors to submit and win claims against host countries, which render ISDS rules highly contested (Allee & Peinhardt, 2011; Simmons, 2014; Wellhausen, 2016). Thus, this article aims to shed new light on the choice of arbitration forums in IIAs. In doing so, it joins a growing body of research that examines the design of IIAs more broadly (Allee & Peinhardt, 2014; Alschner, 2017; Manger & Peinhardt, 2017; Thompson, Broude, & Haftel, 2019).

As we explore this question, we are especially interested in the role of domestic legal traditions, particularly the Islamic legal tradition (ILT). The notion that such traditions affect states' domestic and foreign policy is not new. Focusing primarily on the distinction between common law and civil law countries, several studies have showed that the latter tends to have heavier government regulation, less judicial independence, and weaker protection of foreign investors (La Porta, Lopez-de-Silanes, & Shleifer, 2008). They are also more likely to sign IIAs and other types of international agreements (Elkins, Guzman, & Simmons, 2006; Simmons,

2009). Unfortunately, much of this research overlooks ILT, which is prevalent in about 10% of countries around the world. More recent studies, spearheaded by Emilia Powell, have begun to examine the effect of ILT on such outcomes as the resolution of territorial disputes, international trade, and commitment to international courts and treaties (Powell & Rickard, 2010; Powell & Wiegand, 2010; Mitchell & Powell, 2011; Powell, 2015; Powell, 2016; Powell, 2018). This research has thus far overlooked the effect of ILT on the legalization of IIAs, however.

This study builds on and contributes to these bodies of research by, first, developing a theoretical framework that links ILT to forum choice in ISDS provisions. It begins with the observation that ILT tends to be less formal and legalized than other legal traditions, and then argues that Islamic law countries will ‘export’ this preference into their IIAs. This should be reflected in a weaker commitment to dispute resolution within the framework of the International Centre for the Settlement of Investment Dispute (ICSID), the most legalized forum available (Allee & Peinhardt, 2010, 2014), on the one hand, and a greater commitment to forums with Islamic characteristics, such as the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and the Arab Investment Court (AIC), on the other.

We test these expectations with new data on provisions related to ISDS forum choice in more than 2,600 IIAs. Accounting for a host of alternative explanations identified by previous studies as well as for other characteristics shared by Islamic countries, we find strong empirical support for the theoretical argument: pairs of countries with ILT are less likely to select ICSID as an exclusive arbitration forum, but are more likely to include Islamic forums in their IIAs. With respect to the latter, it appears that references to such forums are unique to Islamic countries, rather than a broader phenomenon. These findings underscore the significance of domestic legal traditions to international cooperation through international institutions. This lesson holds not

only for economically developed countries, but also – and perhaps with even greater force – to the Islamic world, which is often neglected in mainstream research on international legalization and the global investment regime.

This article proceeds as follows. The next section develops the theoretical framework and presents testable hypotheses. The third section describes the research design, main variables, and data. The fourth section reports the results of the statistical analysis. The final section concludes.

### **Theoretical Framework**

Domestic legal systems are exceptionally diverse. One prominent distinction among these systems refers to the notion of a legal tradition, which consists of cultural and institutional aspects, and can be defined as ‘a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity’ (Perez-Perdomo & Merryman, 2007, p. 2). Scholars have used different categorizations of legal traditions (e.g., La Porta et al., 2008; Mitchell & Powell, 2011; Glenn, 2014). In this study, we rely on Mitchell and Powell’s (2011) categorization, which identifies three major legal traditions: civil, common, and Islamic.

Although they are by no means static, these three legal traditions have several distinct characteristics, including major concepts, procedures, reliance on religious sources and their degree of formalism. ILT is considered the least formal among the three (Glenn, 2014). The civil legal tradition, the most influential and widely spread in the world, is characterized by the highest degree of formalism, while the common legal tradition, originated in Great Britain, is considered less formal (Mitchell & Powell, 2011). As we discuss below, ILT’s greater informality is manifested in different aspects, including, importantly, dispute settlement.

First, however, a brief note on what is perhaps the most fundamental distinction between ILT and other legal traditions: reliance on religious sources. While ILT is based on the Islamic faith, the civil and common legal traditions are secular. Although the latter two have also based important legal concepts on (Christian) religious sources, the legal systems themselves are separate from religion (Mitchell & Powell, 2011). Islamic law, the *Shari'a*,<sup>1</sup> is inherently bound to the Islamic faith. It does not only embody aspects of formal law, but also includes ethical guidelines. Islamic law represents the will of *Allah* (God) and dictates the standards of proper conduct in every sphere of life (Powers, 1992). Not only does it govern relations between individuals, but also between groups, communities and, most crucially for our purposes, nations. Islamic international law (*Siyar*), as well as other branches of the *Shari'a*, draw their authority from a divine source, as they are grounded in the *Qur'an* and the *Sunna*. Therefore, just as Muslim individuals are obliged to abide by certain ethical principles, so are Islamic nations (Bsoul, 2008). The fundamental connection between the Islamic faith and Islamic law is relevant to the discussion of prominent ILT features vis-à-vis dispute settlement – mainly its preference for more informal, flexible proceedings – as these are rooted in Islam's primary religious sources.<sup>2</sup>

ILT's aversion to formality is manifested in the manners by which legal procedures are carried out, and prominently so in dispute settlement. Thus, the judicial process is comprised of less formal procedures, reflecting a preference for a more flexible adjudication as opposed to

---

<sup>1</sup> The *Shari'a*, literally 'path,' refers to the Islamic law in its entirety, and provides Muslims with a body of rules and guidelines to lead a devout life (Lombardi, 2006). It is comprised of the *Qur'an*, the main source of Islamic law, which is considered by Muslims as the words of God, as well as the *Sunna* and the *Hadith*, the practices and sayings of the Prophet Muhammad (Hallaq, 2007).

<sup>2</sup> This is not to say that Islamic law is a fixed, a-historical, phenomenon – it is, of course, an evolving legal system. The precepts we discuss are not only rooted in Islamic religious texts, but also prevalent in contemporary societies, both in and outside the formal legal system.

more formal, Western procedures (Iqbal, 2001). Central to the preference of more informal venues to settle disputes is the concept of conciliation (*sulh*), which can be defined as a ‘settlement grounded upon compromise negotiated by the disputants themselves or with the help of a third party’ (Othman, 2007, p. 68). This is a flexible process that requires the agreement of both parties to the dispute. As part of the process of dispute settlement, the preferred conciliator or arbitrator in ILT is an insider, who maintains good relations with both parties. This can be contrasted with the ideal arbitrator in Western approaches, who is often portrayed as a neutral, unaffiliated, outsider (Irani & Funk, 1998).

*Sulh* is a prominent tool for dispute settlement in the Islamic legal tradition and in Islamic culture more generally. The *Qur’an*, the *Sunna* and classical commentaries refer to it as the preferred method to settle disputes, and emphasize the importance of solving disputes through amicable agreement (Othman, 2007; Hallaq, 2007). Although the word itself appears in the *Qur’an* only once (Dupret & Ben Hounet, 2014), the root sa-la-ha (which denotes the notions of peace and reconciliation) appears numerous times, and the practice of conciliation is mentioned and encouraged in various verses (Fazaluddin, 2016). Along with the *Qur’an*, the *Sunna* also encourages conciliation. According to tradition, the Prophet Muhammad favored conciliation and is described as having acted as a mediator in many private and public disputes (Dupret & Ben Hounet, 2014).

According to the *Sunna*, the Prophet regarded formal trials as a mechanism that does not necessarily lead to truth-finding. That is because adjudication, as it is a process shaped and concluded by men and not by God, can result in favoring the more eloquent or resourceful disputant. Conciliation, in contrast, due to its less formal nature, enables compromise and substantive justice. Along these lines, a known hadith attributed to the second caliph, Umar ibn

al-Khattab, is expressly skeptical of adjudication and calls for conciliation: ‘Dispel the disputants until they settle amicably with one another; for truly adjudication leads to rancor’ (Othman, 2007, p. 69).

Importantly, *sulh* is not only a part of customary practice in Muslim societies, but also a part of the legal tradition itself. Thus, *sulh* is both an ethical and religious precept and a judicial instrument (Othman, 2007). Notwithstanding the ancient roots of *sulh*, it remains highly relevant in the current era. In particular, it is still practiced in contemporary Muslim societies, both as part of official judicial systems and in more informal settings (Dupret & Ben Hounet, 2014; Iqbal, 2001; Othman, 2007). In sum, ILT displays a preference for informal venues of dispute settlement. Greater flexibility, allowing disputing parties to arrive to an agreed-upon solution, is assumed to result in a long-lasting compromise.

Building on previous theoretical and empirical studies, we argue that these domestic legal preferences are externalized by Islamic law states, and therefore affect how they design their IIAs. The idea that states’ domestic characteristics affect their international conduct is not new, and has been explored by liberal, institutionalist and constructivist scholars alike. Thus, in his seminal work, Andrew Moravcsik (1997) outlines the liberal argument according to which domestic ideas and institutions are a major factor in shaping states’ preferences, and consequently, their foreign policies. This logic is exemplified by research on the democratic peace, which makes the case that democratic states externalize their domestic norms of dispute resolution (Maoz & Russett, 1993; Dixon, 1994).

Furthermore, recent studies have begun to consider another domestic factor influencing states’ behavior: domestic law. These studies argue that domestic and international law are inextricably linked, as a state’s legal tradition shapes its attitude towards international law. In

general, it is claimed, states whose domestic legal characteristics are more closely aligned with those of the international legal system, are more likely to follow principles of international law (Jouannet, 2006; Mitchell & Powell, 2011; Zartner, 2014). Thus, the nature of the domestic legal system influences states' foreign policy preferences and behavior. This had been demonstrated in several issue areas, such as trade (Helpman, 2006; Nunn, 2007; Powell & Rickard, 2010), resolution of territorial disputes (Powell & Wiegand, 2010; Powell, 2015) and international adjudication (Mitchell & Powell, 2011). Most research, however, has focused on civil and common law traditions, with little attention to the ILT. The body of research that has examined ILT's implications for international politics is yet to be extended to international investment law. We take up this challenge by, first, pointing to relevant domestic manifestations of Islamic law, and, second, by discussing how they are expected to shape preferences with respect to ISDS forums, a key element of international investment arbitration.

Islamic law is incorporated into domestic legal systems in different ways, including in personal status laws, commercial law and as a source of legislation. Thus, many ILT states refer to *sulh* in their personal status codes, as a preferred method for settling disputes (Keshavjee, 2002). Islamic law may also be incorporated into the core of the domestic legal system. For example, Egypt amended its constitution in 1980 and stipulated the *Shari'a* as the *chief* source of domestic legislation. Furthermore, in 1985, the Egyptian Supreme Constitutional Court determined that the amendment to the constitution requires that the entire Egyptian legislation enacted after 1980 be reviewed for consistency with the principles of the *Shari'a* (Lombardi, 2006).

Egypt's new investment law, passed in 2015, nicely illustrates the impact of the Islamic legal tradition on domestic dispute resolution in this area. It sanctions the establishment of new

domestic forums for dispute resolution, aiming to simplify and reduce the cost of such processes. Significantly, it also encourages amicable settlement of investment disputes (Salah, 2015). These bodies were indeed endorsed by members of the Egyptian business community, who perceive them as facilitating a constructive dialogue between disputants and as cost-saving instruments (Al-Huta, 2018). Building on these insights, we argue that these domestic legal preferences are externalized by ILT states, and therefore affect the manners by which they design their IIAs. The remainder of this section elaborates on this argument, first with respect to legal delegation to ICSID, and then with respect to the adoption of Islamic arbitration forums.

### *ICSID Delegation*

When governments negotiate IIAs, they have a menu of ISDS mechanisms and forums to choose from. These include non-binding venues, such as conciliation and mediation, as well as binding arbitration bodies. We argue that ILT's tendency to resolve disputes using less formal venues will result in ILT states' preference for more informal ISDS venues. Even when choosing to settle an investment dispute through arbitration, not all venues are equally legalized. Several bodies serve the need for ISDS, and despite a process of standardization in recent years, they are by no means uniform (Dugan, Wallace, & Sabahi, 2008). Following Allee and Peinhardt's lead (2010, 2014), we conceptualize these differences with legal delegation, a key aspect of legalization (Abbott, Keohane, Moravcsik, Slaughter, & Snidal, 2000).<sup>3</sup>

Legal delegation ranges from political bargaining to standing courts, at the lower and higher ends, respectively (Abbott et al., 2000). In the context of ISDS, a reference to domestic

---

<sup>3</sup> This conceptualization is compatible with studies that refer to institutional independence (Haftel & Thompson, 2006). Other, largely equivalent, conceptualizations focus on the degree to which DSMs are institutionalized (Allee & Peinhardt, 2014), strong (Allee & Elsig, 2016), or formal (Koremenos & Betz, 2013; Powell, 2015). We use the terms legal delegation and formality interchangeably.

courts represents the least legalized option, as states delegate no power to international arbitration bodies, thereby retaining control over the legal process. On the other extreme, ICSID, the most prominent body engaged in ISDS, represents the highest degree of legal delegation. While ICSID is not the only forum listed in IIAs, we concur with Allee and Peinhardt (2010, 2014) that it reflects greater delegation than such bodies as the International Chamber of Commerce (ICC), and ad hoc tribunals that rely on to the United Nations Commission on International Trade Law (UNCITRAL) rules.

First, ICSID was established by an international convention and is backed by a powerful independent secretariat which is part of the World Bank (St John, 2018), thereby placing it higher in the hierarchy of international tribunals compared with institutions set up by private bodies. Second, ICSID's procedural rules render it distinctly more formal compared with other venues, most importantly UNCITRAL, the most common alternative for ISDS. The latter's rules allow more flexibility than ICSID, as parties have discretion to devise legal procedures according to their needs and wishes (Dugan et al., 2008). Third, ICSID explicitly defines its applicable law, while UNCITRAL does not dictate specific rules. Thus, the ICSID Convention determines that when the parties fail to agree on the law to be applied in the case, the Tribunal will apply the law of the State party to the dispute, as well as rules of international law. The UNCITRAL rules, on the other hand, state that when the parties fail to agree on the applicable rules, 'the Tribunal shall apply the law which it determines to be appropriate' (UNCITRAL, 2014, Art. 35(1)). Finally, ICSID's enforcement mechanism is much stronger than UNCITRAL's. The former requires that parties treat ICSID awards as if they were final judgments of their domestic courts, while the latter does not (Dugan et al., 2008)

Given ILT's aversion to legalization and formality, we expect states with this legal tradition to refrain from including ICSID in their IIAs, especially as an exclusive arbitration forum (as we explain below, IIAs can refer to more than one arbitration forum or set of rules). This will allow them to maintain the legal flexibility they are accustomed to domestically. Egypt, a notable ILT state, nicely illustrates this logic. Its 1975 BIT with the United Kingdom (a common law country) and its 2005 BIT with Germany (a civil law country) refer to ICSID as the only ISDS arbitration forum. Unsurprisingly, this approach is in line with many other British and German IIAs, which presumably impose their preference for high legal delegation on weaker countries, such as Egypt. In contrast, Egypt's 1997 BITs with Algeria and Bahrain (both ILT states) does not include ICSID as a possible arbitration forum at all. Thus, our first hypothesis is:

*H1: IIAs signed by two ILT countries are less likely to refer to ICSID as an exclusive forum for ISDS, compared to IIAs signed by at least one non-ILT country*

### ***Islamic Forums***

For many years, international arbitration was dominated by institutions developed in Europe and North America, and, arguably, it still is. Nevertheless, in recent years there had been a gradual increase in the number of international arbitration institutions established outside these regions, with new arbitration centers emerging elsewhere (Abdel Raouf, 2016). Scholars have explained this development with the reality that Western dominated international arbitration has been perceived by developing countries, including in the Muslim world, as imposed and biased (Brower & Sharpe, 2003; Sornarajah, 2015; Mitchell & Powell, 2011). The distaste of the latter was based, at least in part, on their experience with international arbitration during the Cold War. In particular, several decisions related to disputes over the ownership of natural resources,

especially oil, favored foreign investors at the expense of the host country (Sornarajah, 2015; Brower & Sharpe, 2003).

Frustrated with the available options, Muslim countries have begun to establish their own arbitration centers in the last few decades. Notably, there is no evidence that developing countries that follow civil or common legal traditions or located in other regions have adopted a similar approach vis-à-vis investment disputes. Despite the recent proliferation of arbitration centers and adjudication mechanisms in the developing world, one is hard-pressed to find IIAs with a reference to forums located in Sub-Saharan Africa, Latin America, Eastern Europe, or East Asia.<sup>4</sup>

A brief comparison to Latin America is instructive in this respect. Like many Islamic countries, and perhaps even more so, Latin American countries suffered from the imposition of Western investor rights at the expense of their national sovereignty for more than two centuries (Maurer, 2013). Such ‘gun-boat’ diplomacy in the 19<sup>th</sup> century led to the development of the Calvo Doctrine, which called for the exhaustion of local remedies before foreign investors can turn to their home governments or international arbitration for assistance. More broadly, the Calvo Doctrine, which was embraced by most Latin American countries at least until the 1980s, reflects skepticism and hostility towards the global investment regime and, and of ICSID in particular. Notwithstanding this attitude, there are no references to Latin American arbitration centers in IIAs involving Latin American countries that were signed in this period.

This omission is perhaps understandable with respect to IIAs signed in the 1980s and 1990s, decades during which many Latin American countries embraced neoliberalism, but more

---

<sup>4</sup> We were able to identify only one exception: an arbitration center in Singapore.

difficult to explain with respect to later years that witnessed the revival of the Calvo Doctrine (Titi, 2014). Beginning in the early 2000s, in light of mounting investment claims against them, Latin American countries have begun to question the advantages of investor-friendly IIAs and to take steps to limit investor protection and access to ISDS. This was done with the development of more ‘progressive’ IIAs, the renegotiation of existing treaties, or even their termination (Calvert, 2018; Haftel and Levi, in press). One might therefore expect that IIAs concluded by Latin American countries would refer to any of the numerous arbitration centers in this region – but they do not.<sup>5</sup> This observation suggests that the reference to regional forums is especially prominent in Islamic countries rather than a more general trend in the developing world.

We now turn to discuss three arbitration and adjudication mechanisms dealing with investment disputes that are most frequently referred to in IIAs signed by Muslim signatories: CRCICA and the AIC, established under *the Unified Agreement for the Investment of Arab Capital in the Arab States*.<sup>6</sup> The commonalities between these mechanisms, rendering them more appealing for ILT states to include in their IIAs, pertain to their composition as well as their procedures. With respect to the former, these institutions were established by and for Muslims, and all or most of their arbitrators or judges are Muslim. Thus, in CRCICA, roughly two-thirds of the arbitrators are Egyptians, or from other Arab countries (El Shentenawi, 2012). As for the AIC, both the Unified Agreement and the Court’s statute state that its judges are expected to be from different Arab nationalities (Unified Agreement, 1980, art. 28). Arguably, this mandatory background increases the likelihood that arbitrators and judges in these forums will follow, at

---

<sup>5</sup> In addition, the twelve members of the Union of South American Nations (UNASUR) have negotiated a proposal to establish the UNASUR Centre for Investment Dispute since 2008. An agreement on this forum was not reached, however (Gómez & Titi, 2016). Given the uncertain fate of UNASUR itself, it is unlikely to come to fruition.

<sup>6</sup> Other institutions include *the Asian International Arbitration Centre (AIAC)* in Kuala Lumpur (Malaysia), *the Istanbul Chamber of Commerce (ICOC)*, and *the Afghan Chamber of Commerce (ACC)*.

least to an extent, some precepts of ILT when administrating disputes, as practitioners are influenced by their cultural background and their legal upbringing. It is also in line with the manner ILT portrays the ideal type arbitrator: an ‘insider’ third party.

With respect to procedures, ILT states are expected to prefer Islamic to Western forums because the former tend to rely much more on an insider third party and to provide the disputing parties with greater flexibility. This becomes apparent when one takes a closer look at the rules of prominent Islamic forums referred to in IIAs. The CRCICA was established in 1979 under the auspices of the Asian-African Legal Consultative Organization. The Center’s arbitration rules are based upon the UNCITRAL rules, already making them less formal than ICSID’s, as we elaborated earlier. In addition, the CRCICA rules were modified in relations to those of UNCITRAL, thereby making the former even more flexible (Alam Eldin, 2000). For example, with respect to the process of nominating arbitrators, ‘The parties may agree on a different procedure for appointment of the arbitral tribunal than as provided under these Rules’ (CRCICA, 2011, Art. 8). This provision expands the options to appoint insider arbitrators. It is also in line with ILT’s emphasis on solving disputes through cultivating understanding and compromise between disputing parties.

In addition to the CRCICA, some IIAs, the vast majority of which concluded between ILT states, refer disputes to two supra-national frameworks: The Unified Agreement for the Investment of Arab Capital in the Arab States and the AIC. The Agreement was signed under the auspices of the Arab League in 1980 and was ratified by most member states (Ben Hamida, 2006). It offers Arab investors improved standards of treatment, grants them protections under international law, and provides mechanisms for dispute settlement: conciliation, arbitration, and adjudication by the Arab Investment Court (Unified Agreement, 1980, Art. 28). The procedures

regarding arbitration and conciliation, detailed in the Annex to the Agreement, provide briefer and more ambiguous guidelines compared with UNCITRAL, ICSID and CRCICA rules. This lack of details provides members with greater flexibility regarding different aspects of the arbitral procedures. For example, the rules do not specify the arbitral Tribunal's applicable law.<sup>7</sup>

Only if the disputing parties have failed to agree to conciliation or arbitration, or if the conciliators or arbitrators have failed to award a decision within the specified time, the parties may turn to the AIC (Unified Agreement, 1980, Art. 27). Although established in 1980, the Court had only become operational in 2003, and had rendered its first decision in 2004 (Ben Hamida, 2006). Since then, the Court had rendered only thirteen decisions, the majority of whom in favor of the defendant state, making it a less attractive option for investors – but, perhaps, more appealing to states to include in their BITs, as the court displays a tendency to favor states' sovereignty over the investors' interests. Thus, our second hypothesis is:

*H2: IIAs signed by two ILT countries are more likely to refer to Muslim arbitration forums and frameworks for ISDS, compared to IIAs signed by at least one non-ILT country*

## **Research Design**

The unit of analysis is the treaty and the key variables of interest are specific design features included in them (discussed next). Our data set includes 2,653 IIAs from 1959, the year in which the first BIT was signed, to 2016, for which information on treaty design is available (out of 3,324 by the end of 2016).<sup>8</sup> On the whole, we believe that this is a very comprehensive and

---

<sup>7</sup> However, unlike the UNCITRAL, CRCICA and ICSID rules, the Agreement maintains that the Tribunal will always determine its own procedures, not only when the disputing parties have failed to agree upon them (Unified Agreement, 1980, Annex).

<sup>8</sup> According to UNCTAD's World Investment Report (UNCTAD, 2017).

representative sample. We now turn to the description of the dependent and independent variables. Summary statistics and a correlation matrix are reported in the Online Appendix.

### *Dependent Variables*

As discussed in the previous section, we are interested in treaty provisions that involve the selection of investment arbitration forums. We focus on two aspects of this issue, which are most closely associated with the degree of legalization, namely ICSID and Islamic forums. We discuss each in turn.

**ICSID** – the construction of this variable largely follows Allee and Peinhardt (2010). Thus, *ICSID* is an ordinal variable that can obtain the following values: 0 if no binding international investment arbitration is available; 1 if ISDS provisions exist, but ICSID is not listed as a possible arbitration forum; 2 if ICSID is one out of two or more optional forums; and 3 if ICSID is the exclusive option for ISDS.<sup>9</sup> Given the setup of this variable, we use an ordered probit technique (with robust standard errors) in the statistical analysis.

Information on the provisions that list the arbitration forums available to the parties is taken mostly from UNCTAD's IIA Mapping Project,<sup>10</sup> which 'mapped' 2,572 IIAs on this design feature. While this is a very comprehensive sample, we were concerned that the 22% of IIAs not coded by UNCTAD are not randomly distributed across time and space. In particular, we wanted the sample to include as many IIAs between ILT states as possible. Indeed, sixty-three such treaties were not coded by UNCTAD. To minimize this potential problem, we

---

<sup>9</sup> 2 is the modal category with about 62% of the sample. It is followed by 3 (~22%), 1 (~11%), and 0 (~5%).

<sup>10</sup> <http://investmentpolicyhub.unctad.org/IIA/mappedContent#iiaInnerMenu> (accessed September 14, 2019).

searched for the texts of these IIAs and coded all of the texts we have found according to the criteria of the IIA Mapping Project ourselves.<sup>11</sup>

**Islamic Forums** – an Islamic forum is defined as any arbitration body located in an Islamic country or an agreement among Islamic countries. It includes the following instruments: CRCICA, AIC, AIAC, ICOC, ACC and the Unified Agreement. The variable Islamic Forum scores one if an IIA lists one of these forums as a possible venue for investment arbitration, and zero otherwise.<sup>12</sup> Since this is a binary variable, we use probit (with robust standard errors) in the statistical analysis.

Unlike ICSID, the IIA Mapping Project does not have a separate category for Islamic Forums.<sup>13</sup> We therefore coded this variable ourselves. We suspected that most IIAs with references to Islamic forums involve at least one Islamic party (a suspicion that proved right, as it turns out). We therefore manually examined all such IIAs and coded them as appropriate. For the remaining treaties, we used an automated search of key words, based on the compiled list of Islamic forums. We first searched all IIAs in English and then repeated this exercise for treaties in French and Spanish. These searches indicated that no IIA that does not involve a non-Islamic country refers to an Islamic forum.<sup>14</sup> We therefore coded them zero on this variable.

---

<sup>11</sup> We were able to obtain and code forty-four of those IIAs. In total, our sample includes 123 out of 142 (86.6%) known intra-Islamic treaties. We thank Wolfgang Alschner and Rodrigo Polanco Lazo for sharing several treaties from their Electronic Database of Investment Treaties (EDIT) with us (Alschner, Elsig, & Polanco Lazo, 2019; Polanco Lazo, Desilvestro, & Bazrafkan, 2018). The vast majority of the IIAs procured are in Arabic. Each treaty was coded by one of the co-authors and a research assistant separately. The coding was then compared and reconciled.

<sup>12</sup> We code IIAs with no ISDS at all as zero. Excluding them from the analysis does not change the results.

<sup>13</sup> Coders have to code three binary indicators in this category: ICSID, UNCITRAL, and ‘other forums.’ Islamic forums fall under the latter category, but so are several non-Islamic forums such as the ICC, the Stockholm Chamber of Commerce, and unspecified ad hoc tribunals.

<sup>14</sup> Due to technical limitations, we were not able to search a small number of IIAs in additional languages, such as Russian, German, and Portuguese. Nevertheless, given the results on treaties in the three most prominent languages,

Unsurprisingly, perhaps, the number of treaties that have a reference to an Islamic Forum is decidedly small. Seventy-five IIAs, or about 2.8% of the sample, score one on this variable. As we shall see, one implication of this limited variation is that several independent variables drop from the analysis. Nevertheless, variation on *Islamic Forum* across those treaties that involve at least one Islamic state is still meaningful, thereby rendering the statistical analysis worthwhile.

### ***Key Independent and Control Variables***

**Legal Tradition** – Islamic legal tradition is the key independent variable in this study. We expect the strongest effect of this factor when both parties to a treaty have this legal tradition.<sup>15</sup> Thus, *Islamic Law Dyad* scores one if the two parties are Islamic law countries, and zero otherwise. This variable is coded based on the categorization of Mitchell and Powell (2011), which examines states' official legal systems and the degree to which they are substantially based on the *Qur'an*. The literature on the implications of legal tradition for international relations points to the importance of common law and civil law as well. Generally speaking, the received wisdom holds that civil law countries are more likely than common law countries to embrace international law and legalization (Elkins et al., 2006; Simmons, 2009). Nevertheless, some studies indicate that common law countries are actually more likely to welcome international law. For example, Haftel and Thompson (2013) find that common law countries ratify IIAs more quickly than other countries. We therefore add two additional variables:

---

it seems safe to assume that they do not include references to Islamic forums as well. These IIAs score zero on *Islamic Law Dyad*.

<sup>15</sup> Given that many IIAs signed by Islamic countries are with more powerful economically developed countries, the latter's superior bargaining position is likely to prevent the inclusion of legal forums preferred by the former (Allee & Peinhardt, 2010). Indeed, IIAs in which only one party is an ILT state are *not* associated with less legalized ISDS forums (results on file with Authors).

*Common Law Dyad* and *Civil Law Dyad*, also based on the categorization of Mitchell and Powell (2011). Note that the default category for the three legal tradition variables are mixed dyads and those IIAs that involve countries that do not fit any of these three categories.

**Other Common Attributes of Islamic Countries** – the theoretical framework suggests that it is legal tradition that pushes Islamic states away from ICSID and towards Islamic, and other, legal forums. Of course, Islamic states share many other characteristics beyond their legal tradition, which might also influence their approach to international law and dispute resolution.

Accounting for such alternative explanations is challenging, to say the least. As a first cut, we consider three other variables that capture shared Islamic traits other than legal tradition.

Considering the positive and high correlation between these variables (see Table A4), we include them in separate models.<sup>16</sup>

First, we look at the religious breakdown of the parties with the variable *Muslim Majority Dyad*. It scores one if both countries have a majority of Muslim people and zero otherwise. The rationale for including this variable is a conjecture that Islam may play a significant role in society, even in countries whose legal systems cannot be categorized as Islamic due to Western influences (Powell, 2015). This means that although the formal state law may not be Islamic, Islamic values, customs and norms might influence decision makers, bureaucrats and law practitioners in their decisions and conduct. Indonesia and Turkey are good examples of such countries. Although having a mixed and a civil legal tradition, respectively,

---

<sup>16</sup> Nevertheless, Table A2 in the Online Appendix reports four models that include three Islamic-related variables (we still keep *Muslim Majority Dyad* and *OIC Dyad*, which are especially highly correlated, in separate models). Unless noted otherwise, these model specifications do not affect the results.

most of their populations are Muslim, and Islam plays an important part both in their national identity and in the society.

Second, we account for membership in the Organization of Islamic Cooperation (OIC). This variable is intended to capture Islamic identity more broadly, as only sixteen of the thirty-one OIC members are classified as Islamic law states. The OIC, an international governmental organization (IGO), brands itself as being ‘the collective voice of the Muslim World’ (The OIC Official Website).<sup>17</sup> Despite criticism regarding its inefficiency and limited influence, this IGO serves as a major platform for Muslim states to discuss political, economic, religious and social issues (Kayaoglu, 2015). Hence, it serves as a suitable, even if crude, proxy for Islamic identity. *OIC Dyad* scores one if both parties to the IIA are OIC members, and zero otherwise.

Finally, the economies of many Islamic countries rely on the production and export of oil, perhaps more heavily than other developing countries. Possibly, this unique economic structure affects Islamic countries’ approach to investment law and arbitration. For example, one could imagine that oil exporting countries are less vulnerable to investment flight or more likely to engage in direct expropriation. We account for this possibility with membership in the Organization of Petroleum Exporting Countries (OPEC), an IGO that brings together many of the major oil producers. *OPEC Dyad* scores one if both parties to the IIA are OPEC members, and zero otherwise.

### ***Additional Control Variables***

Beyond the variables already mentioned, we take into account several additional factors that previous studies have shown to affect IIA design. In a couple of recent studies, Broude, Haftel,

---

<sup>17</sup> [https://www.oic-oci.org/page/?p\\_id=52&p\\_ref=26&lan=en](https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en) (accessed September 14, 2019).

and Thompson (2017, 2018) and Thompson et al. (2019) found that investment chapters in free trade agreements (FTAs) tend to have greater state regulatory space (SRS) than stand-alone BITs, a concept that parallels, at least to an extent, less legalization. One might therefore expect investment chapters in FTAs to score lower on the *ICSID* variable. We account for this possibility with *FTA*, which scores one if the IIA is an investment chapter in an FTA, and zero otherwise.

These studies also indicate that SRS has changed as the global investment regime evolved. In line with research that points to several ‘waves’ of the global investment regime (Jandhyala, Henisz, & Mansfield, 2011; Poulsen & Aisbett, 2013), they show that states were slow to delegate legal power to international bodies during the Cold War era, but espoused a much more liberal approach in the 1990s. Since the middle 2000s, however, states have begun to reclaim SRS in their IIAs, most likely due to their experience with investment arbitration (Haftel & Thompson, 2018; Thompson et al., 2019). To control for such temporal dynamics, all models include three dummy variables: *Signed before 1980*, *Signed 1980-1989*, *Signed after 2004*. Thus, the time period for comparison is 1990-2004. If the notion of waves has validity, these three variables should have a negative sign with respect to *ICSID*.

In their study of *ICSID* legalization, Allee and Peinhardt (2010, 2014) identify several variables that affect it in important ways. We made an effort to control for the variables that were found to be influential in their work. Our approach is different from theirs in at least one respect, however. Allee and Peinhardt (Ibid.) define the home and host states *a priori*, based on the pair’s relative level of development.<sup>18</sup> We, on the other hand, do not assign the parties a particular role

---

<sup>18</sup> That is, the party with the higher gross domestic product (GDP) per capita is designated the home state, and the party with the lower GDP per capita is designated the host state.

in advance. We believe our approach is appropriate for two reasons. First, a large number of IIAs was concluded between two developing countries, in which it is not entirely clear which party is the sender and which is the recipient of FDI. In fact, almost half of the IIAs in our sample (46.8%) are South-South. Second, at least since the 2000s, more and more emerging markets are becoming major capital exporters, as exemplified by China, Russia, Singapore, and Chile.

With this in mind, Allee and Peinhardt (Ibid.) argue that home countries prefer greater legalization of investment arbitration, while host countries oppose it. When the balance of power favors the home country, they further contend, IIAs will be more legalized.<sup>19</sup> We operationalize this variable in two different ways. First, taking the argument at face value, one might expect North-South IIAs to be more legalized than South-South ones. Thus, *North-South IIA* is a binary variable that scores one if at least one party is an economically developed country, and zero otherwise.<sup>20</sup> This variable may capture other systematic differences between these two types of dyads (Poulsen, 2015). Importantly, it also allows us to determine whether the aversion of ILT states to ICSID holds even when accounting for broader trends in South-South IIAs. Second, and much closer to Allee and Peinhardt's (2010, 2014) measure, we calculate the GDP ratio of the smaller to the larger country. *GDP Ratio* ranges from zero to one, with higher values indicating a more balanced bargaining power. Data for this variable are taken from the World Bank's World Development Indicators (WDI). If Allee and Peinhardt's (Ibid.) theory holds, then, the sign on this variable ought to be negative.

---

<sup>19</sup> Allee & Elsig (2016) make a similar argument with respect to trade agreements.

<sup>20</sup> Only a handful of treaties were signed between two economically developed countries, although such IIAs may become more widespread in the future.

Next, Allee and Peinhardt (Ibid.) argue and find that greater trade dependence increases the dependence on FDI and, by implication, diminishes the opposition to ICSID. Following their lead, we add *Export/GDP*, which is the value of export as a share of GDP. Given that this is a monadic variable, we employ the commonly made ‘weakest link’ assumption and take the value of the party with lower *Export/GDP*. That is, we assume that the country less sensitive to the effect of trade will have greater effect on treaty design. Data for this variable are taken from the WDI as well.

Turning to domestic political factors, we include three variables considered by Allee and Peinhardt (Ibid.). The first two are democracy and executive constraints. Allee and Peinhardt expect a negative effect of these institutional factors on ICSID legalization, suggesting that strong checks and balances obviate the need for robust international legal commitments. Their findings do not corroborate these expectations, however, and have, if anything, the opposite effect (Ibid.). One possible explanation for this result is that countries ‘export’ their preferred domestic institutions. According to this logic, a commitment to strong international legal forums complements, rather than substitutes, strong constraints on decision-makers. Be that as it may, it appears important to control for these factors. Thus, *Polity* is the Polity 2 value taken from the Polity IV Project (Marshall, Gurr, & Jaggers, 2017). *POLCON III* is the level of executive constraints, taken from Henisz (2000). Along similar lines, law and order in a country may be associated with more or less commitment to investor protection (Tobin & Rose-Ackerman, 2011), and by extension to the legalization of investment arbitration (Allee & Peinhardt, 2010). *Law & Order* is based on the Political Risk Service’s International Country Risk Guide’s measure, which ranges from zero to six for low and high levels of law and order, respectively. Data are taken from Henisz (2000). For all three variables, we take the lower value in the dyad.

Finally, we take into account bilateral political factors that might affect the willingness of states to delegate sovereignty to international institutions. Allee and Peinhardt (2010) conjecture that home states may be more reluctant to put pressure on their partners to sign up for highly legalized instruments. In addition, parties with strong mutual interests may be able to resolve their differences in less formal manners. On the other hand, one might think that states that see international politics eye-to-eye may find legal delegation more acceptable. We control for this possibility with two variables based on voting similarity in the United Nations General Assembly (UNGA), namely *Affinity UN* and *Delta IPD*. The former is the S score measured with the similarity of voting in the UNGA (Gartzke & Jo, 2002; Signorino & Ritter, 1999). It ranges from 1, for identical voting patterns, to -1, for diametrically opposed voting patterns. The latter is the difference between the two parties' ideal point data (IPD). IPD is the position of a given country in relations to the US-led liberal order in the UNGA (Bailey, Strezhnev, & Voeten, 2017). Higher values on *Delta IPD* indicate greater divergence of interests between the two countries. These two variables are included in separate models.

## Results

Tables 1 and 2 present the statistical results for ICSID legalization. Table 1 reports four models, one for each of the independent variables related to Islamic states, that is *Islamic Law Dyad*, *Muslim Majority Dyad*, *OIC Dyad* and *OPEC Dyad*. These models also include other variables related to legal tradition as well basic controls for which data are available for the entire sample. This allows us to maximize the number of observations in the analysis. Table 2 zeros in on *Islamic Law Dyad* and adds several control variables in turn. As apparent from the number of observations in these six models, including these variables leads to a loss of 13% to 32% percent of the sample, due to missing data. Thus, taken together, the models in the two tables provide

one with a good sense of the robustness of the results. Table 3 reports substantive effects of statistically significant independent variables on *ICSID*. Table 4 presents the results of the four independent variables related to Islamic states on *Islamic Forum*. As mentioned above, these models include a limited number of relevant control variables. Finally, Figure 1 illustrates the substantive effects of Islamic-related variables on the likelihood of adopting an Islamic forum as an option for investment arbitration in IIAs.

The results provide strong support for the theoretical framework. As model 1 in Table 1 shows, *Islamic Law Dyad* is negative and statistically significant at a 99% level of confidence. Hence, IIAs in which both signatories have an Islamic legal tradition are less likely to adopt ICSID as a forum for ISDS. The models in Table 2 demonstrate that this effect remains intact after adding a battery of economic and political factors to the basic model. Table 3 indicates that the effect of Islamic legal tradition is also substantively meaningful. A dyad in which both countries have Islamic law are about 50% less likely to adopt ICSID as an exclusive arbitration forum, compared to other dyads (10% versus 21%). In contrast, the probability of no reference to ICSID or no ISDS at all is about 28% for intra-ILT IIAs, but only 15% for other agreements. Turning to the adoption of Islamic Forums, Model 11 in Table 4 indicates that *Islamic Law Dyad* is positive and highly statistically significant, as expected. Figure 1 further shows that the probability of including a reference to an Islamic forum in an IIA rises from virtually zero when this variable scores zero to a whopping 22% percent when this variable scores one.

**Table 1:** The Determinants of ICSID Provisions, Basic Ordered Probit Models

	(1) ICSID	(2) ICSID	(3) ICSID	(4) ICSID
<i>Islamic Law Dyad</i>	-0.465*** (-4.22)			
<i>Muslim Majority Dyad</i>		-0.174** (-2.06)		
<i>OIC Dyad</i>			-0.0777 (-0.99)	
<i>OPEC Dyad</i>				-0.323 (-1.07)
<i>Common Law Dyad</i>	0.437*** (2.79)	0.449*** (2.87)	0.456*** (2.92)	0.464*** (2.98)
<i>Civil Law Dyad</i>	-0.113** (-2.45)	-0.0935** (-2.06)	-0.0866* (-1.90)	-0.0795* (-1.77)
<i>North-South IIA</i>	0.199*** (4.46)	0.212*** (4.67)	0.227*** (4.93)	0.240*** (5.45)
<i>FTA</i>	-0.429** (-2.30)	-0.426** (-2.28)	-0.417** (-2.23)	-0.412** (-2.20)
<i>Signed before 1980</i>	-1.526*** (-8.04)	-1.528*** (-8.06)	-1.528*** (-8.06)	-1.526*** (-8.05)
<i>Signed 1980-1989</i>	0.0428 (0.35)	0.0421 (0.34)	0.0422 (0.34)	0.0408 (0.33)
<i>Signed after 2004</i>	-0.288*** (-6.58)	-0.277*** (-6.38)	-0.275*** (-6.34)	-0.271*** (-6.30)
<i>N</i>	2,653	2,653	2,653	2,653
<i>pseudo R<sup>2</sup></i>	0.052	0.049	0.048	0.049

*t* statistics in parentheses

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

**Table 2:** The Determinants of ICSID Provisions, Additional Control Variables

	(5) ICSID	(6) ICSID	(7) ICSID	(8) ICSID	(9) ICSID	(10) ICSID
<i>Islamic Law Dyad</i>	-0.483*** (-3.66)	-0.493*** (-3.77)	-0.499*** (-4.04)	-0.570*** (-4.49)	-0.594*** (-4.66)	-0.622*** (-4.48)
<i>Common Law Dyad</i>	0.403** (2.54)	0.439** (2.44)	0.375** (2.30)	0.418** (2.57)	0.411** (2.50)	0.301 (1.39)
<i>Civil Law Dyad</i>	-0.0931* (-1.83)	-0.201*** (-3.76)	-0.173*** (-3.41)	-0.133** (-2.41)	-0.152*** (-2.72)	-0.0982* (-1.68)
<i>FTA</i>	-0.396* (-1.72)	-0.470** (-1.99)	-0.482** (-2.04)	-0.333 (-1.44)	-0.344 (-1.49)	-0.682* (-1.83)
<i>Export/GDP</i>	0.007*** (3.78)	0.008*** (4.64)	0.007*** (4.08)	0.006*** (3.36)	0.006*** (3.24)	0.005*** (2.62)
<i>North-South IIA</i>		0.221*** (4.34)	0.239*** (4.91)	0.282*** (5.14)	0.314*** (5.86)	0.269*** (4.69)
<i>Signed before 1980</i>	-0.387 (-1.31)	-0.836*** (-3.22)	-0.905*** (-3.51)	-0.435 (-1.41)	-0.638** (-2.15)	
<i>Signed 1980-1989</i>	0.193 (1.22)	0.205 (1.27)	0.154 (0.99)	0.099 (0.60)	0.095 (0.58)	-0.106 (-0.54)
<i>Signed after 2004</i>	-0.363*** (-7.29)	-0.354*** (-7.17)	-0.346*** (-7.06)	-0.318*** (-6.19)	-0.323*** (-6.39)	-0.295*** (-5.42)
<i>GDP Ratio</i>	-0.157* (-1.73)					
<i>Polity</i>		0.013*** (3.30)				
<i>Polcon III</i>			0.542*** (4.38)			
<i>Affinity UN</i>				0.034 (0.37)		
<i>Delta IPD</i>					-0.052 (-1.53)	
<i>Law &amp; Order</i>						-0.040* (-1.91)
<i>N</i>	2,245	2,175	2,300	2,158	2,160	1,790
<i>pseudo R<sup>2</sup></i>	0.019	0.038	0.041	0.028	0.030	0.028

*t* statistics in parentheses

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

**Table 3:** Predicted Probability of ICSID Legalization due to Changes in Statistically Significant Independent Variables

Variable	Value	Score on ICSID Legalization			
		No (0)	Low (1)	Medium (2)	High (3)
<i>Islamic Law Dyad</i>	NO	.0370	.1102	.6438	.2090
	YES	.0932	.1865	.6191	.1012
<i>Muslim Majority Dyad</i>	NO	.0382	.1114	.6424	.2080
	YES	.0549	.1387	.6445	.1618
<i>Common Law Dyad</i>	NO	.0396	.1148	.6453	.2003
	YES	.0142	.0587	.5839	.3432
<i>Civil Law Dyad</i>	NO	.0351	.1066	.6423	.2161
	YES	.0448	.1237	.6470	.1845
<i>North-South IIA</i>	NO	.0485	.1298	.6472	.1744
	YES	.0316	.0997	.6385	.2303
<i>FTA</i>	NO	.0384	.1127	.6447	.2042
	YES	.0901	.1833	.6220	.1046
<i>Before 1980</i>	NO	.0326	.1017	.6397	.2260
	YES	.3753	.2874	.3260	.0114
<i>After 2004</i>	NO	.0345	.1054	.6417	.2184
	YES	.0629	.1509	.6428	.1434
<i>Export/GDP</i>	LOW	.0275	.1013	.6765	.1947
	HIGH	.0181	.0774	.6579	.2466
<i>GDP Ratio</i>	LOW	.0207	.0844	.6652	.2296
	HIGH	.0246	.0942	.6727	.2085
<i>Polity</i>	LOW	.0313	.1042	.6734	.1911
	HIGH	.0207	.0798	.6562	.2433
<i>Polcon III</i>	LOW	.0316	.1030	.6840	.1815
	HIGH	.0194	.0751	.6639	.2416
<i>Law &amp; Order</i>	LOW	.0080	.0795	.6883	.2241
	HIGH	.0109	.0964	.7015	.1912

Note: effects are generated using Spost (Long and Freese, 2005). Variables except the variable of interest are held at mean values. For continuous variables high and low values are one standard deviation above and below the mean, respectively. For binary variables, high and low values equal one and zero, respectively. The results are based on Model 1 except for and Export/GDP and GDP Ratio (Model 5), Polity (Model 6), Polcon III (Model 7), and Law and Order (Model 10).

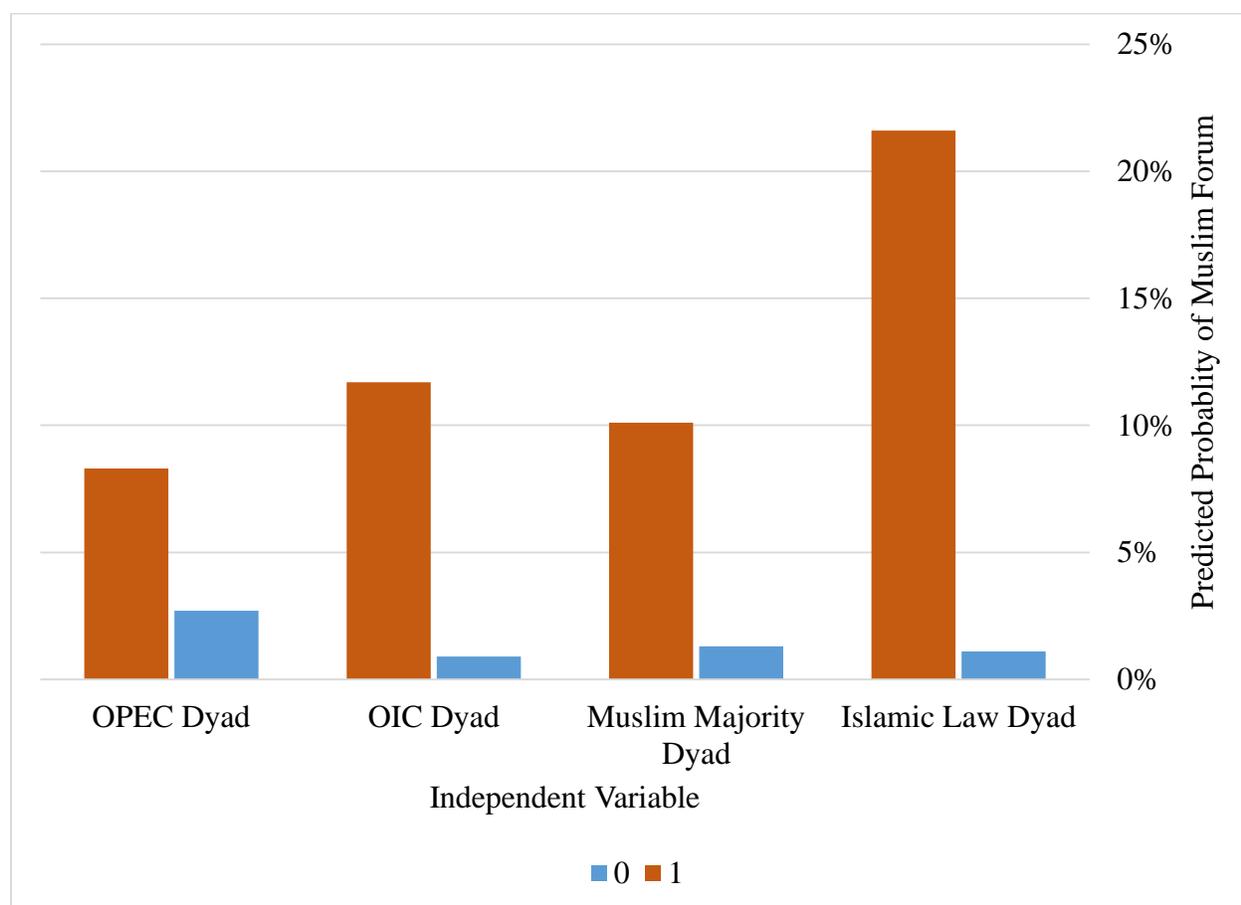
**Table 4:** The Determinants of Muslim Forums, Probit Models

	(11) Muslim Forum	(12) Muslim Forum	(13) Muslim Forum	(14) Muslim Forum
<i>Islamic Law Dyad</i>	1.643*** (10.87)			
<i>Muslim Majority Dyad</i>		1.050*** (7.80)		
<i>OIC Dyad</i>			1.295*** (8.65)	
<i>OPEC Dyad</i>				0.644* (1.73)
<i>Civil Law Dyad</i>	-1.017*** (-3.29)	-1.252*** (-3.68)	-1.275*** (-3.76)	-1.451*** (-4.52)
<i>North-South IIA</i>	-0.404** (-2.48)	-0.510*** (-3.11)	-0.260 (-1.44)	-0.918*** (-6.17)
<i>After 2004</i>	-0.0870 (-0.50)	-0.192 (-1.17)	-0.180 (-1.06)	-0.239 (-1.54)
<i>Constant</i>	-1.908*** (-17.76)	-1.776*** (-17.32)	-2.027*** (-15.69)	-1.357*** (-18.55)
<i>N</i>	2,653	2,653	2,653	2,653
<i>pseudo R<sup>2</sup></i>	0.364	0.273	0.313	0.187

*t* statistics in parentheses

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

**Figure 1:** Predicted Probability of *Muslim Forum* due to Different Values on Islamic-Related Independent Variables



Might the effect of Islamic legal tradition on legalization an artifact of other characteristics associated with Islamic countries? The statistical analysis suggests that this is unlikely. In models 2-4 in Table 1, the three other Islamic-related variables have a negative sign, as expected, but only *Muslim Majority Dyad* is statistically significant. The statistical significance and the substantive effect of this variable are weaker than that of *Islamic Law Dyad*, however. Moreover, as tables A1 and A2 in the Online Appendix show, *Muslim Majority Dyad* becomes only weakly statistically significant or not statistically significant at all when additional

controls are included or when *Islamic Law Dyad* is included in the models.<sup>21</sup> These findings increase our confidence that, indeed, the inclination of Islamic countries not to embrace ICSID emanates from their legal tradition, and not from their identity more generally or the reliance of their economy on oil.

Such inference is more uncertain with respect to *Islamic Forum*. Here, all Islamic-related variables are positive and statistically significant (but *OPEC Dyad* is only weakly so). This is not entirely surprising, perhaps, given that Islamic countries are the only ones that incorporate such forums into their treaties. Nevertheless, as Table 4 and Figure 1 make clear, the effect of legal tradition on *Islamic Forum* is statistically as well as substantively stronger than the other Islamic-related factors. Most notably, the substantive effect of the other variables is, at most, half of *Islamic Law Dyad*'s. Moreover, as models 3 and 4 in Table A2 in the Online Appendix indicate, when including multiple Islamic-related variables in the same model, *Muslim Majority Dyad* and *OPEC Dyad* lose statistical significance (and the latter's sign turns negative), all the while *Islamic Law Dyad* remains highly statistically significant. We therefore cautiously surmise that the most important Islamic-related variable to explain the incorporation of a Muslim forums into an IIA is, indeed, Islamic legal tradition.

The control variables perform mostly as expected. Consistent with the conventional wisdom, *Common Law Dyad* and *Civil Law Dyad* are both statistically significant in all models, and the former is positive, while the latter is negative. These results indicate that common law dyads are much more likely to prefer ICSID as an exclusive ISDS forum compared to other country pairs (but less likely to list ICSID as one forum among several). IIAs signed by two

---

<sup>21</sup> *Muslim Majority Dyad* actually switches signs in the latter. *OIC Dyad* also becomes positive and even statistically significant.

countries with a civil legal tradition, on the other hand, are less likely to embrace ICSID as the sole forum for investment arbitration. Interestingly, though, both the statistical and the substantive effects of civil legal tradition are lower than those of Islamic legal tradition. With respect to the former, *Civil Law Dyad* reaches only a 90% level of statistical significance in several models. In relations to the latter, intra-civil law IIAs are only 3% less likely than other agreements to refer to ICSID as an exclusive forum, compared to a 10% gap for intra-ILS IIAs. In tandem, these results indicate that the distaste of the Islamic legal tradition to formal dispute resolution is stronger than that of the civil legal tradition. Unsurprisingly, civil law dyads are less likely to incorporate Islamic forums into their IIAs (with common law dyads dropping from the analysis). Taken together, the effects of the three variables pertaining to legal tradition corroborate research that underscores the impact of this factor on international legalization and delegation, and suggests that further examination of this broader issue is warranted.

The view that the global investment regime has evolved in four distinct stages is largely supported by the analysis. Recalling that the early post-Cold War era (1990-2004) is the default category, both the earliest wave (1959-1979) and most recent wave (2005 to the present) are negatively signed and statistically significant. Given that many early BITs had no ISDS provisions at all, the former result is rather predictable. More consequential is the latter result, which suggests that states are becoming increasingly reluctant to delegate legal power to ICSID. Substantively, IIAs signed in this period are less likely to adopt ICSID as an exclusive arbitration forum by about a third, compared to the earlier period. In contrast, the second wave (1980-1989) is not significantly different from the subsequent wave with respect to ICSID delegation. There is also no effect of different time periods on the likelihood of listing Islamic forums as an option for ISDS. In line with other recent studies (Broude et al., 2017), *FTA* is negative and statistically

significant in most models. Thus, investment chapters in FTAs are less likely to adopt ICSID as an arena for the resolution of investment disputes, especially as an exclusive forum, compared to stand-alone BITs. Given that the number of FTAs with investment provisions is on the rise, this is another indication that the legalization of the investment regime is gradually declining.

The analysis offers strong support for the notion that IIAs signed by economically developed countries are more likely to rely on ICSID as an arbitration forum compared to IIAs between developing countries. *North-South IIA* is always positive and highly statistically significant in all model specifications. This suggests that economically developed countries have a stronger preference for ICSID and are able to include this forum in many of their IIAs. The substantive effect of this variable is also meaningful. South-South IIAs are about 24% less likely to adopt ICSID as an exclusive arbitration forum than their North-South counterparts. Notably from our perspective, the effect of *ILT* is robust to the inclusion of this variable, suggesting that the results on legal tradition are not driven by the parties' level of development. Moreover, the substantive effect of *Islamic Law Dyad* is twice as large than *North-South IIA*'s. Unsurprisingly, North-South IIAs are much less likely to include a reference to Islamic forums.

Relatedly, perhaps, the results provide empirical support to the idea that a skewed distribution of power is associated with higher ICSID legalization (Allee & Peinhardt, 2010). As Model 5 in Table 2 shows, *GDP Ratio* is negative and statistically significant at a 90% level of confidence. Also consistent with Allee and Peinhardt (Ibid.), trade openness is always positive and statistically significant at a 99% level of confidence. It appears, then, that greater reliance on international trade results in greater commitment to the legalization of international investment arbitration.

The two variables related to domestic political checks and balances, *Polity* and *Polcon III*, are positive and highly statistically significant. Their substantive impact is pretty similar and rather large. Moving from one standard deviation below the mean to one standard deviation above the mean on either of these variables increases the likelihood of choosing ICSID as the sole arbitration forum by about 25%. Presumably, countries in which the executive delegates a great deal of power to other domestic institutions are also comfortable with delegating sovereignty to international legal bodies. The effect of *Law & Order* points in a somewhat different direction. This variable is negative and statistically significant at a 90% level of confidence. While the substantive effect of this variable appears rather limited, it suggests that higher levels of law and order are associated with lower ICSID legalization. Possibly, stronger domestic legal institutions obviate the need for strong international ones. Finally, the two variables accounting for shared national interests have the expected signs – positive for *Affinity UN* and negative for *Delta IPD* – but neither is statistically significant.

In summary, the statistical analysis provides ample support for the argument that pairs of countries with an Islamic legal tradition sign less legalized IIAs, at least when selecting ISDS forums, both statistically and substantially. This result remains intact after considering other Islamic-related factors and controlling for a battery of alternative explanations, increasing our confidence in the findings.

## **Conclusion**

Building on the idea that domestic legal traditions affect foreign economic policy and that the Islamic legal tradition is more informal than its counterparts, this article investigates the relationships between this legal tradition and ISDS forum choice in IIAs. We argue that the high degree of legalization enshrined in ICSID and the lower degree of formality characterizing

Islamic forums renders the former less and the latter more appealing to ILT states. Using new data on the content of ISDS provisions, we find strong empirical support for these theoretical expectations. Notably, the effect of the Islamic legal tradition is statistically and substantively strong and robust to the inclusion of other legal traditions and traits shared by Islamic countries.

This study joins a small but growing body of research that calls attention to the marked variation in the design of IIAs. Early studies on IIAs assumed that their content is largely homogenous (Elkins et al., 2006; Guzman, 1998). More recent analyses demonstrate that this is not the case, that the content of IIAs varies in systematic manners, and that differences across treaty provisions can have important practical implications (Allee & Peinhardt, 2010, 2014; Alschner, 2017; Broude et al., 2018; Thompson et al., 2019). Given the increasing number and prominence of investment arbitration cases worldwide, grasping the ways by which states balance investor protection and legal flexibility in their IIAs seems especially pressing. From this viewpoint, the reluctance of ILT states to rely on ICSID and to refer to informal regional forums appears perceptive. Other developing countries, especially those hit by multiple investment claims – such as India, Ecuador, and South Africa – have explored and implemented avenues to restrict the access of foreign investors to ISDS and reclaim their regulatory space (Peinhardt & Wellhausen, 2016; Haftel & Thompson, 2018; Thompson et al., 2019). The emphasis of Islamic countries on informal arbitration forums offers one way forward. Arguably, it is less likely to alarm foreign investors than more extreme measures, such as eliminating access to or terminating IIAs altogether.

Another contribution of this article is to illuminate the existence of investment arbitration forums in the Islamic world, a phenomenon largely overlooked by students of international political economy. Considering their actual and potential involvement in

international investment policies, further investigation of these institutions is warranted. To begin with, not all such forums were created equal. For example, while the CRCICA is an independent organization, the AIC and the Unified Agreement are frameworks created by the Arab League, and thus, potentially, have to cater to the interests of different states and stakeholders. This reality may account for the AIC's tendency to rule in favor of respondent states rather than private claimants. In addition, references to regional forums in IIAs does not require their usage (especially if it is only one of several options). Future research ought to examine more systematically whether these forums actually arbitrate IIA-related disputes, which cases are referred to them, and if they handle them differently than the more conventional, 'Western' venues.

Finally, this study treats ILT states as a largely homogenous group. The small number of intra-ILT states renders further disaggregation of this attribute difficult to sustain in the context of a large-N statistical analysis. A promising avenue of future research is a more fine-grained investigation, perhaps with more qualitative methods, of differences across ILT states with respect to the relations between religion, government policy and societal practices (Akbaba & Fox, 2018) and on the effect of affiliation to different religious schools within the Islamic legal tradition on foreign investment policy, which was shown to have implications in other issue-areas (Zartner, 2014).

## References

- Abbot, K. W., Keohane, R. O., Moravcsik, A., Slaughter, A.-M. & Snidal, D. (2000). The concept of legalization. *International Organization*, 54(3), 401-419.
- Abdel Raouf, M. (2016). Emergence of new arbitral centers in Asia and Africa: Competition, cooperation and contribution to the rule of law. In Brekoulakis, S., & Lew, J. D. (Eds.), *The Evolution and Future of International Arbitration* (pp. 321-330). The Netherlands: Kluwer Law International.
- Akbaba, Y., & Fox, J. (2019). Societal rather than governmental change: Religious discrimination in Muslim-majority countries after the Arab uprisings. *All Azimuth*, 8(1), 5-22.
- Al-Huta, H. (2018). Businessmen: the committee for resolution of investment disputes restored confidence in Egypt's investment system. [in Arabic]. *Youm7*, April 2017. Retrieved from <https://www.youm7.com> (accessed September 14, 2019).
- Alschner, W. (2017). The Impact of investment arbitration on investment treaty design: Myths versus reality. *Yale Journal of International Law*, 42(1), 1-66.
- Alschner, W., Elsig, M., & Polanco Lazo, R. (2019). Introducing the electronic database of investment treaties (EDIT). Unpublished Paper. Bern: World Trade Institute.
- Allee, T., & Peinhardt, C. (2010). Delegating differences: Bilateral investment treaties and bargaining over dispute resolution provisions. *International Studies Quarterly*, 54(1), 1-26.
- Allee, T., & Peinhardt, C. (2011). Contingent credibility: The impact of investment treaty violations on foreign direct investment. *International Organization*, 65(3), 401-432.
- Allee, T., & Peinhardt, C. (2014). Evaluating three explanations for the design of bilateral investment treaties. *World Politics*, 66(1), 47-87.
- Allee, T., & Elsig, M. (2016). Why do some international institutions contain strong dispute settlement provisions? New evidence from preferential trade agreements. *The Review of International Organizations*, 11(1), 89-120.
- Bailey, M. A., Strezhnev, A., & Voeten, E. (2017). Estimating dynamic state preferences from United Nations voting data. *Journal of Conflict Resolution*, 61(2), 430-456.
- Ben Hamida, W. (2006). The First Arab investment court decision. *The Journal of World Investment & Trade*, 7(5), 699-672.
- Broude, T., Haftel, Y. Z., & Thompson, A. (2017). The Trans-Pacific partnership and regulatory space: A comparison of treaty texts. *Journal of International Economic Law*, 20(2), 391-417.

- Broude, T., Haftel, Y. Z., & Thompson, A. (2018). Who Cares about Regulatory Space in BITs? A Comparative International Approach. In Roberts, A., Verdier, P.-H., Versteeg, M., & Stephan P. B. (Eds.) *Comparative International Law* (pp. 527-545). Oxford: Oxford University Press.
- Brower, C. N., & Sharpe, J. K. (2003). International arbitration and the Islamic world: The third phase. *The American Journal of International Law*, 97(3), 643-656.
- Bsoul, L. A. (2008). Historical evolution of Islamic law of nations/siyar: Between memory and desire. *Digest of Middle East Studies*, 17(1), 48-67.
- Calvert, J. (2018). Constructing investor rights? Why some states (fail to) terminate bilateral investment treaties. *Review of International Political Economy*, 25(1), 75-97.
- Dixon, W. J. (1994). Democracy and the peaceful settlement of international conflict. *American Political Science Review*, 88(1), 14-32.
- Dugan, C. F., Wallace, D. Jr., Rubins, N., & Sabahi, B. (2008). *Investor-state arbitration*. New York: Oxford University Press.
- Dupret, B., & Ben Hounet, Y. (2014). Arbitration. in Fleet, K., Krämer, G., Matringe, D., Nawas, J., & Rowson, E. (Eds.), *Encyclopaedia of Islam*, THREE. Retrieved from [http://dx.doi.org/10.1163/1573-3912\\_ei3\\_COM\\_24950](http://dx.doi.org/10.1163/1573-3912_ei3_COM_24950) (accessed September 14, 2019).
- El-Shentenawi, L. (2012). CRCICA. Retrieved from [https://www.biicl.org/files/6011\\_raouf\\_19-06-12\\_biicl-crcica.pdf](https://www.biicl.org/files/6011_raouf_19-06-12_biicl-crcica.pdf) (accessed September 14, 2019).
- Elkins, Z., Guzman, A. T., & Simmons, B. A. (2006). Competing for capital: The diffusion of bilateral investment treaties, 1960-2000. *International Organization*, 60(4), 811-846.
- Fazaluddin, S. (2016). Conciliation ethics in the Qur'an. *International Journal for the Semiotics of Law*, 29, 333-358.
- Funk, N. C. & Irani, G. (1998). Rituals of reconciliation: Arab-Islamic Perspectives. *Arab Studies Quarterly*, 20(4), 53-73.
- Gartzke, E., & Jo, D.-J. (2002). *The Affinity of Nations Index, 1946-1996* (Version 3.0). Retrieved from <http://www.columbia.edu/~eg589/datasets.html>.
- Glenn, P. H. (2014). *Legal traditions of the world: Sustainable diversity in law*. Oxford: Oxford University Press.
- Goldstein, J. O., Kahler, M., Keohane, R. O., & Slaughter, A.-M. (2000). Introduction: legalization and world politics. *International Organization*, 54(3), 385-399.
- Gómez, K. F., & Titi C. (2016). International investment law and ISDS: Mapping contemporary Latin America. *The Journal of World Investment & Trade*, 17(4), 515-535.

- Guzman, A. (1998). Why LDCs sign treaties that hurt them: Explaining the popularity of bilateral investment treaties. *Virginia Journal of International Law*, 38, 639-688.
- Haftel, Y. Z., & Levi, H. (Forthcoming). Argentina's curious response to the global investment regime: external constraints, identity, or both? *Journal of International Relations and Development*.
- Haftel, Y. Z., & Thompson, A. (2006). The independence of international organizations: concept and applications. *Journal of Conflict Resolution*, 50(2), 253-275.
- Haftel, Y. Z., & Thompson, A. (2013). Delayed ratification: The domestic fate of bilateral investment treaties. *International Organization*, 67(2), 355-387.
- Haftel, Y. Z., & Thompson, A. (2018). When do states renegotiate investment agreements? The impact of arbitration. *The Review of International Organizations*, 13(1), 25-48.
- Hallaq, W. B. (2009). *An introduction to Islamic law*. Cambridge; New York: Cambridge University Press.
- Helpman, E. (2006). Trade, FDI, and the organization of firms. *Journal of Economic Literature*, 44(3), 589-630.
- Henisz, W. J. (2000). The institutional environment for economic growth. *Economics and Politics*, 12(1), 1-31.
- Iqbal, W. (2001). Dialogue and the practice of law and spiritual values: Courts, lawyering, and ADR: Glimpses into the Islamic tradition. *Fordham Urban Law Journal*, 28(4), 1035-1045.
- Jandhyala, S., Henisz, W. J., & Mansfield, E. D. (2011). Three waves of BITs: The global diffusion of foreign investment policy. *Journal of Conflict Resolution*, 55(6), 1047-1073.
- Jouannet, E. (2006). French and American perspectives on international law: Legal cultures and international law. *Maine Law Review*, 58(2), 291-336.
- Kayaoglu, T. (2015). *The organization of Islamic cooperation: Politics, problems, and potential*. London: Routledge.
- Keshavjee, M. M. (2002). Alternative dispute resolution: Its resonance in Muslim thought and future directions. Speech presented as part of the Ismaili Centre Lecture Series held at The Ismaili Centre, London. Retrieved from <https://iis.ac.uk/alternative-dispute-resolution-its-resonance-muslim-thought-and-future-directions> <https://iis.ac.uk/alternative-dispute-resolution-its-resonance-muslim-thought-and-future-directions> (accessed September 14, 2019).

- Koremenos, B. & Betz, T. (2013). The design of dispute settlement procedures in international agreements. In Dunoff, J. L., & Pollack, M. A. (Eds.), *Interdisciplinary perspectives on international law and international relations: The state of the art* (pp. 371-393). Cambridge, UK: Cambridge University Press.
- La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285-332.
- Lombardi, C. (2006). *State law as Islamic law in modern Egypt: The incorporation of the Shari'a into Egyptian constitutional law*. Leiden; Boston: Brill.
- Manger, M. S., & Peinhardt, C. (2017). Learning and the precision of international investment agreements. *International Interactions*, 43(6), 920-940.
- Maoz, Z., & Russett, B. (1993). Normative and structural causes of democratic peace, 1946-1986. *American Political Science Review*, 87(3), 624-638.
- Maurer, N. (2013). *The empire trap: the rise and fall of US intervention to protect American property overseas, 1893-2013*. Princeton: Princeton University Press.
- Marshall, M. G., Gurr, T. R., & Jagers K. (2017). Polity IV Project: Political regime characteristics and transitions, 1800–2015, Dataset Users' Manual. Center for Systemic Peace. Retrieved from <http://www.systemicpeace.org/inscr/p4manualv2016.pdf>.
- Mitchell, S. M., & Powell, E. J. (2011). *Domestic law goes global: Legal traditions and international courts*. Cambridge, UK: Cambridge University Press.
- Moravcsik, A. (1997). Taking preferences seriously: A liberal theory of international politics. *International Organization*, 51(4), 513-553.
- Nunn, N. (2007). Relationship-specificity, incomplete contracts and the pattern of trade. *The Quarterly Journal of Economics*, 122(2), 569–600.
- Othman, A. (2007). 'And amicable settlement is best': Şulh and dispute resolution in Islamic law. *Arab Law Quarterly*, 21(1), 64-90.
- Peinhardt, C., & Wellhausen, R. L. (2016). Withdrawing from investment treaties but protecting investment. *Global Policy*, 7(4), 571-576.
- Perez-Perdomo, R., & Merryman, J. H. (2007). *The civil law tradition: An introduction to the legal systems of Europe and Latin America*. Stanford: Stanford University Press.
- Polanco Lazo, R., Desilvestro, V., & Bazrafkan, A. (2018). Missing investment treaties. *Journal of International Economic Law*, 21(3), 703-731.
- Poulsen, L. N. S. (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge: Cambridge University Press.

- Poulsen, L. N. S., & Aisbett, E. (2013). When the claim hits: Bilateral investment treaties and bounded rational learning. *World politics*, 65(2), 273-313.
- Powell, E. J. (2015). Islamic law states and peaceful resolution of territorial disputes. *International Organization*, 69(4), 777-807.
- Powell, E. J. (2016). Islamic law states and the authority of the international court of justice: Territorial sovereignty and diplomatic immunity. *Law & Contemporary Problems*, 79(1), 209-286.
- Powell, E. J. (2018). Not so treacherous waters of international maritime law: Islamic law states and the UN convention on the law of the sea. In Roberts, A., Stephan, P. B., Verdier, P.-H., & Versteeg, Mila (Eds.), *Comparative international law* (pp. 571-594). New York: Oxford University Press.
- Powell, E. J., & Rickard, S. J. (2010). International trade and domestic legal systems: Examining the impact of Islamic law. *International Interactions*, 36(4), 335-362.
- Powell, E. J., & Wiegand, K. E. (2010). Legal systems and peaceful attempts to resolve territorial disputes. *Conflict Management and Peace Science*, 27(2), 129-151.
- Powers, D. (1992). On judicial review in Islamic law. *Law and Society Review*, 26(2), 315-342.
- Salah, F. (2015, April 14). Egypt: New investment law – ADR for investor-state disputes. *Kluwer Arbitration Blog*. Retrieved from <http://arbitrationblog.kluwerarbitration.com/2015/04/14/egypt-new-investment-law-adr-for-investor-state-disputes/> (accessed September 14, 2019).
- Signorino, C. S., & Ritter, J. M. (1999). Tau-b or not Tau-b: Measuring the similarity of foreign policy positions. *International Studies Quarterly*, 43(1), 115-144.
- Simmons, B. A. (2009). *Mobilizing human rights: International law in domestic politics*. Cambridge: Cambridge University Press.
- Simmons, B. A. (2014). Bargaining over BITs, arbitrating awards: The regime for protection and promotion of international investment. *World Politics*, 66(1), 12-46.
- Smith, J. M. (2000). The politics of dispute settlement design: Explaining legalism in regional trade pacts. *International Organization*, 54(1), 137-180.
- Sornarajah, M. (2015). *Resistance and change in the international law on foreign investment*. Cambridge: Cambridge University Press.
- St John, T. (2018). *The rise of investor-state arbitration: Politics, law, and unintended consequences*. Oxford: Oxford University Press.
- The Cairo Regional Center for International Commercial Arbitration (2011). *Arbitration Rules*. Cairo: CRCICA.

- The Unified Agreement for the Investment of Arab Capital in the Arab States. *Signed* Nov. 26, 1980, UNCTAD/DTCI/30 (Vol. II), 211.
- Thompson, A., Broude, T., & Haftel, Y. Z. (2019). Once bitten, twice shy? Investment disputes, state sovereignty and change in treaty design. *International Organizations*, 73(4).
- Titi, C. (2014). Investment arbitration in Latin America: The uncertain veracity of preconceived ideas. *Arbitration International*, 30(2), 357-386.
- Tobin, J., & Rose-Ackerman, S. (2011). When BITs have some bite: The political-economic environment for bilateral investment treaties. *Review of International Organizations*, 6(1), 1-32.
- United Nations Commission on International Trade Law (2014). *UNCITRAL Arbitration Rules*. Vienna: UNCITRAL.
- United Nations Conference on Trade and Development (2017). *World Investment Report 2017*. Geneva: UNCTAD.
- Wellhausen, R. L. (2016). Recent trends in investor–state dispute settlement. *Journal of International Dispute Settlement*, 7(1), 117-135.
- Zartner, D. (2014). *Courts, codes, and custom: Legal tradition and state policy toward international human rights and environmental law*. New York: Oxford University Press.

## Online Appendix

**Table A1.** The Determinants of *ICSID: Muslim Majority* with Additional Control Variables

	(1)	(2)	(3)	(4)	(5)	(6)
<i>Muslim Maj. Dyad</i>	-0.180* (-1.93)	-0.116 (-1.13)	-0.126 (-1.30)	-0.179* (-1.80)	-0.188* (-1.90)	-0.216* (-1.80)
<i>Common Law Dyad</i>	0.409** (2.57)	0.452** (2.51)	0.390** (2.40)	0.429*** (2.64)	0.427*** (2.61)	0.321 (1.49)
<i>Civil Law Dyad</i>	-0.0765 (-1.52)	-0.178*** (-3.38)	-0.147*** (-2.93)	-0.1000* (-1.84)	-0.115** (-2.08)	-0.067 (-1.16)
<i>FTA</i>	-0.392* (-1.71)	-0.471** (-2.00)	-0.479** (-2.03)	-0.331 (-1.44)	-0.337 (-1.46)	-0.673* (-1.82)
<i>Export/GDP</i>	0.007*** (3.83)	0.008*** (4.58)	0.007*** (4.07)	0.006*** (3.40)	0.006*** (3.25)	0.005** (2.58)
<i>North-South IIA</i>		0.239*** (4.66)	0.259*** (5.27)	0.290*** (5.24)	0.316*** (5.85)	0.299*** (5.18)
<i>Signed before 1980</i>	-0.387 (-1.31)	-0.832*** (-3.20)	-0.905*** (-3.51)	-0.446 (-1.45)	-0.645** (-2.18)	
<i>Signed 1980-1989</i>	0.200 (1.26)	0.220 (1.37)	0.167 (1.07)	0.104 (0.62)	0.106 (0.65)	-0.0848 (-0.43)
<i>Signed after 2004</i>	-0.355*** (-7.18)	-0.337*** (-6.87)	-0.330*** (-6.77)	-0.305*** (-5.95)	-0.305*** (-6.07)	-0.273*** (-5.06)
<i>GDP Ratio</i>	-0.191** (-2.10)					
<i>Polity</i>		0.014*** (3.60)				
<i>Polcon III</i>			0.560*** (4.47)			
<i>Affinity UN</i>				-0.007 (-0.08)		
<i>Delta IPD</i>					-0.029 (-0.87)	
<i>Law &amp; Order</i>						-0.041** (-1.98)
<i>N</i>	2,245	2,175	2,300	2,158	2,160	1,790
<i>pseudo R<sup>2</sup></i>	0.017	0.035	0.037	0.024	0.025	0.021

**Table A2.** The Determinants of ICSID and Muslim Forums, Including Three Islamic-Related Variables in the Same Model

	(1) ICSID	(2) ICSID	(3) Muslim Forum	(4) Muslim Forum
<i>Islamic Law Dyad</i>	-0.482*** (-3.43)	-0.639*** (-4.47)	1.500*** (7.68)	1.287*** (6.17)
<i>Muslim Majority Dyad</i>	0.0212 (0.21)		0.303 (1.64)	
<i>OIC Dyad</i>		0.203** (2.09)		0.556*** (2.62)
<i>OPEC Dyad</i>	0.0333 (0.11)	0.0363 (0.12)	-0.495 (-1.24)	-0.495 (-1.23)
<i>Common Law Dyad</i>	0.438*** (2.80)	0.451*** (2.88)		
<i>Civil Law Dyad</i>	-0.112** (-2.43)	-0.102** (-2.20)	-0.993*** (-3.22)	-1.006*** (-3.29)
<i>North-South IIA</i>	0.201*** (4.41)	0.227*** (4.91)	-0.346** (-2.07)	-0.252 (-1.41)
<i>FTA</i>	-0.427** (-2.28)	-0.411** (-2.18)		
<i>Signed before 1980</i>	-1.526*** (-8.04)	-1.525*** (-8.02)		
<i>Signed 1980-1989</i>	0.0429 (0.35)	0.0420 (0.34)		
<i>Signed after 2004</i>	-0.288*** (-6.62)	-0.289*** (-6.65)	-0.0685 (-0.40)	-0.0732 (-0.42)
Constant			-1.970*** (-17.14)	-2.063*** (-15.24)
<i>N</i>	2,653	2,653	2,653	2,653
<i>pseudo R<sup>2</sup></i>	0.052	0.053	0.370	0.376

*t* statistics in parentheses

\*  $p < 0.1$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$

**Table A3. Summary Statistics**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>STD</b>	<b>Min</b>	<b>Max</b>
<i>ICSID</i>	2,653	2.00	0.73	0.00	3.00
<i>Muslim Forum</i>	2,653	0.03	0.17	0.00	1.00
<i>Islamic Law Dyad</i>	2,653	0.05	0.21	0.00	1.00
<i>Muslim Majority Dyad</i>	2,653	0.09	0.28	0.00	1.00
<i>OIC Dyad</i>	2,653	0.11	0.31	0.00	1.00
<i>OPEC Dyad</i>	2,653	0.01	0.07	0.00	1.00
<i>Common Law Dyad</i>	2,653	0.02	0.14	0.00	1.00
<i>Civil Law Dyad</i>	2,653	0.41	0.49	0.00	1.00
<i>North-South IIA</i>	2,653	0.53	0.50	0.00	1.00
<i>FTA</i>	2,653	0.01	0.10	0.00	1.00
<i>Export/GDP</i>	2,321	25.24	12.19	0.12	89.72
<i>GDP Ratio</i>	2,318	0.21	0.25	0.00	1.00
<i>Polity</i>	2,449	-0.17	6.83	-10.00	10.00
<i>Polcon III</i>	2,568	0.19	0.19	0.00	0.71
<i>Affinity UN</i>	2,369	1.22	0.87	0.00	4.01
<i>Delta IPD</i>	2,367	0.72	0.32	-1.00	1.00
<i>Law &amp; Order</i>	1,957	3.20	1.46	0.00	6.00
<i>Signed before 1980</i>	2,653	0.05	0.22	0.00	1.00
<i>Signed 1980-1989</i>	2,653	0.07	0.26	0.00	1.00
<i>Signed after 2004</i>	2,653	0.19	0.39	0.00	1.00

**Table A4. Correlation Matrix**

	<i>ICSID</i>	<i>Muslim Forum</i>	<i>Islamic Law Dyad</i>	<i>Muslim Majority Dyad</i>	<i>OIC Dyad</i>	<i>OPEC Dyad</i>	<i>Common Law Dyad</i>	<i>Civil Law Dyad</i>	<i>North-South IIA</i>	<i>FTA</i>	<i>Export/GDP</i>	<i>GDP Ratio</i>	<i>Polity</i>	<i>Polcon III</i>	<i>Affinity UN</i>	<i>Delta IPD</i>	<i>Law &amp; Order</i>	<i>Signed 1980-1989</i>
<i>Muslim Forum</i>	-0.05																	
<i>Islamic Law Dyad</i>	-0.10	0.46																
<i>Muslim Majority Dyad</i>	-0.04	0.31	0.62															
<i>OIC Dyad</i>	-0.02	0.34	0.68	0.87														
<i>OPEC Dyad</i>	-0.06	0.12	0.31	0.18	0.21													
<i>Common Law Dyad</i>	0.03	-0.02	-0.03	-0.04	-0.04	-0.01												
<i>Civil Law Dyad</i>	-0.02	-0.15	-0.19	-0.21	-0.24	-0.05	-0.12											
<i>North-South IIA</i>	0.13	-0.12	-0.23	-0.29	-0.33	-0.09	0.03	0.08										
<i>FTA</i>	-0.07	-0.02	-0.02	-0.02	-0.03	-0.01	0.15	-0.03	0.00									
<i>Export/GDP</i>	0.03	0.00	0.00	-0.02	-0.03	0.04	-0.08	-0.03	-0.03	-0.03								
<i>GDP Ratio</i>	-0.05	0.10	0.14	0.07	0.09	0.08	-0.06	-0.01	-0.21	0.00	0.07							
<i>Polity</i>	0.10	-0.19	-0.25	-0.27	-0.31	-0.07	0.05	0.37	0.28	0.06	-0.14	-0.06						
<i>Polcon III</i>	0.12	-0.14	-0.19	-0.22	-0.23	-0.02	0.02	0.24	0.21	0.05	-0.08	0.05	0.71					
<i>Affinity UN</i>	0.03	-0.08	-0.24	-0.20	-0.26	-0.09	0.05	-0.20	0.44	-0.02	-0.03	-0.12	-0.12	-0.11				
<i>Delta IPD</i>	-0.04	0.10	0.19	0.17	0.21	0.07	-0.10	0.21	-0.47	-0.04	0.08	0.16	-0.03	-0.01	-0.80			
<i>Law &amp; Order</i>	-0.02	-0.03	-0.02	-0.04	-0.05	-0.04	0.00	-0.12	0.05	-0.01	0.13	0.11	-0.07	-0.03	0.15	-0.05		
<i>Signed 1980-1989</i>	0.01	-0.04	-0.02	0.00	-0.01	-0.02	0.06	-0.10	0.11	-0.02	-0.12	-0.06	-0.13	-0.16	0.09	-0.17	-0.12	
<i>Signed after 2004</i>	-0.10	-0.03	-0.01	0.04	0.04	0.06	0.01	-0.11	-0.09	0.18	0.26	-0.01	-0.09	-0.07	-0.02	-0.07	0.02	-0.10