

Regulatory competition and the location of international arbitration proceedings

Christopher R. Drahozal*

University of Kansas School of Law, Green Hall, Lawrence, KS 66045, USA

Abstract

This article examines whether countries that enact new or revised arbitration laws succeed in attracting new arbitration proceedings to be held in the country. Using a panel of countries that enacted new arbitration laws from 1994-1999, it finds a statistically significant increase in the number of International Chamber of Commerce arbitrations held in the countries after enactment. The economic benefit to the countries from the additional proceedings, however, likely is much smaller than some supporters of the laws have asserted.

Keywords: Arbitration; International Trade; Regulatory Competition

1. Introduction

Many commentators have observed that countries compete to attract international arbitration proceedings by enacting laws favorable to arbitration. According to Sanders (1996, p. 12-30), “[m]odernization of arbitration laws is inspired by the desire to make arbitration more attractive to its users. A certain competition between countries to attract arbitration to be held in their country can be noted.” Carbonneau (2000, p. 1143) has complained that “[c]ountries have, without shame, exhibited their desire to attract the business of arbitration” by “climb[ing] on the ‘hospitable-jurisdiction-to-arbitration’

* Tel.: +1-785-864-9239; fax: +1-785-864-5054.
E-mail address: drahozal@ku.edu.

bandwagon.” But although some have touted the economic benefits of such laws to the enacting jurisdiction, no empirical work on the effects of enactment has yet been done.¹

This article takes the first empirical steps toward an understanding of regulatory competition in international arbitration law. It examines the effect of such competition on the parties’ choice of the place of arbitration – in other words, the extent to which countries that revise their arbitration statutes succeed in attracting parties to hold more arbitration proceedings in the country. Using a panel of countries that enacted new or revised arbitration statutes from 1994 through 1999, the article finds a statistically significant increase in the number of International Chamber of Commerce (“ICC”) arbitration proceedings held in the countries following enactment. The increase in proceedings is surprisingly large in percentage terms, albeit small in absolute numbers. The findings are subject to the qualification that only aggregate data (and not data on individual arbitrations) is available. The article nonetheless provides evidence that enactment of a new or revised arbitration statute benefits the enacting country, although those benefits appear substantially smaller than some supporters of the laws have suggested.

Part 2 provides background on international commercial arbitration, including the parties’ choice of the place of arbitration and the competition among arbitral venues to attract arbitration proceedings. Part 3 describes the sample, and Part 4 discusses the variables and data. Part 5 summarizes the empirical results. Part 6 concludes.

¹ By comparison, economists have undertaken numerous empirical studies on the extent and effects of regulatory competition in corporate law. For recent discussions of the empirical evidence, see Bebchuk et al. (2002); Bebchuk & Hamdani (2002); Kahan & Kamar (2002); Romano (2001); Romano (1993). In particular, see Bebchuk & Cohen (2003) for an empirical examination of firm decisions where to incorporate, a question analogous to the one considered here.

2. Background

Parties to international business transactions commonly include in their contracts an arbitration clause, providing for a neutral arbitrator (or arbitrators) to make a binding award resolving any dispute that may arise (Berger 1993). Arbitration of international commercial disputes avoids “hometown justice” (Park 1998) – having a dispute resolved by a court in the other party’s home country. Arbitration also results in an award that is more readily enforceable internationally than a court judgment (Bühning-Uhle 1996).

Many major trading cities have institutions that provide (for a fee) administrative services for international arbitrations and that promulgate rules to govern arbitration proceedings they administer. The International Chamber of Commerce (“ICC”), headquartered in Paris, is the “central institution” involved in international commercial arbitration, although it faces increasing competition from a number of national arbitral institutions (Dezalay & Garth 1996, p. 45).² In 2000, claimants filed 541 new arbitration proceedings with the ICC, an increase of 12 over the previous year and of 89 over 1997.³

Most parties provide in their arbitration agreement for the arbitration proceeding to be held in a particular place or “situs” (Bond 1999). A variety of considerations go into the parties’ choice of the place of arbitration, including the accessibility of the site to the parties, the availability of necessary infrastructure, and the applicability of a treaty

² See also Drahozal (2000, pp. 99-100) (describing competition and listing other leading arbitral institutions). Parties need not use the services of an arbitration institution, but instead may establish ad hoc proceedings administered by the arbitration panel itself.

³ 2000 ICC Statistical Report, at 5.

(such as the New York Convention⁴) providing for the enforceability of arbitral awards.⁵ “[I]n the final analysis,” however, “legal considerations should weigh most heavily, because the law governing the arbitration (the so-called *lex arbitri*) is typically considered to be the law of the country where the proceedings are held and the award enforced.”⁶

Because of the importance of the legal environment to the parties’ choice of the place of arbitration, numerous countries in recent years have enacted or revised their arbitration statutes to make them more attractive to international arbitration proceedings. For example, more than thirty jurisdictions have enacted the Model Law on International Commercial Arbitration – a low-cost way for a country to modernize its arbitration law – since the Model Law was promulgated by the United Nations Commission on International Trade Law (“UNCITRAL”) in 1985.⁷ According to Berger (1993, p. 6 & n.55), these new laws are “‘marketing strategies,’ intended to send a signaling effect to

⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38, 21 U.S.T. 2518 (1970) (“New York Convention”).

⁵ The list of considerations in the UNCITRAL Notes on Organizing Arbitral Proceedings (1996, ¶ 22) is typical:

Among the more prominent factors are: (a) suitability of the law on arbitral procedure of the place of arbitration; (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced; (c) convenience of the parties and the arbitrators, including the travel distances; (d) availability and cost of support services needed; and (e) location of the subject-matter in dispute and proximity of evidence.

See also Craig et al. (2000, § 7.02); Redfern & Hunter (1999, pp. 283-290).

⁶ Reisman et al. (1997, at 172); see also Redfern & Hunter (1999, p. 284) (“the most important consideration is usually the legal environment”).

⁷ UNCITRAL Model Law on International Commercial Arbitration, June 21, 1985, U.N. Doc. No. A/40/17; see UNCITRAL (2001).

the international arbitration community of the userfriendliness of their legal environment and of the quality of services offered in these jurisdictions.”

A variety of interest groups have an incentive to support enactment of a new arbitration law: arbitration institutions, which earn fees from administering arbitration proceedings; local lawyers, who earn fees representing parties in arbitration; and hotels, which charge for conference rooms and accommodations. But “the major beneficiaries” of new arbitration laws, according to Nottage (2000, p. 56), “are good local arbitrators.” Parties have good reason to select at least one local arbitrator on a panel of arbitrators because of his or her knowledge of local arbitration law. To the extent enactment increases the number of arbitration proceedings held in the country, local arbitrators will benefit. As a result, much as “state competition to supply law may be driven by lawyers rather than legislatures” (O’Hara & Ribstein 2000, p. 1161 n.37), so, too, may competition among arbitral venues be driven by prospective international arbitrators (Drahozal 2003).

In lobbying for enactment of new or revised arbitration laws, supporters frequently tout the substantial economic benefits they expect to result. In one well-known example, during the Parliamentary debates on the Arbitration Act of 1979, “Lord Cullen of Ashborne ventured an estimate that a new arbitration law might attract to England as much as £500 million per year of ‘invisible exports,’ in the form of fees for arbitrators, barristers, solicitors, and expert witnesses” (Craig et al. 1990, pp. 467-68). Supporters of Ireland’s enactment of the UNCITRAL Model Law in 1999 likewise cited potential economic gains to the country, although without quantification.⁸ Critics,

⁸ See, e.g., Press Release, O’Donoghue Publishes Bill Designed to Attract International Inward Investment to Ireland (Oct. 2, 1997) <www.irlgov.ie:80/justice/Press%20Releases/Press-97/pr-0210b.htm>

however, have questioned the extent of such benefits. According to Dezalay & Garth (1996, p. 299, n.21):

In England, the partisans of reform of arbitration estimated that millions of pounds were being lost to London and its legal profession from the fact of legislation perceived by their foreign counterparts as too restrictive and costly. The same individuals today admit that the estimates, widely reported by the press, were complete inventions.

No credible estimates of the effects of new arbitration laws have been made. This article takes a partial step toward filling that gap.

3. Sample

The sample consists of those countries that enacted new or revised arbitration statutes from 1994 through 1999. The countries were identified from a listing of arbitration statutes in Smit & Pechota (2001). To the extent English translations of the statutes were available, I verified that the statute properly could be treated as a “modernization” of the country’s arbitration law more favorable to arbitration.⁹ All countries classified as major arbitration countries (defined below) so qualified.

To ensure sufficient variability in the data, the sample is limited to countries from which at least one party participated in an ICC arbitration during the years studied and that had ratified the New York Convention prior to 2000. I also excluded Germany,

(“The economies of other countries have benefited considerably from arbitration business and there is no reason why Ireland should not share in those benefits”) (quoting John O’Donoghue, Minister for Justice, Equality and Law Reform”); Debates of the Houses of the Oireachtas on Arbitration (International Commercial) Bill, 1997: Second Stage <www.irlgov.ie:80/debates/s14may98/sect2.htm> (“[The bill] will strengthen Ireland’s position and I believe we will succeed in securing a great deal of international business here as a result of it”) (remarks of Mrs. Taylor Quinn); id.(“a modern arbitration law, for which the Bill provides, has the potential to attract valuable arbitration business to this State”) (remarks of Miss M. Wallace, Minister of State and the Department of Justice, Equality and Law Reform).

Kuwait, and Oman due to missing data, and China, Hong Kong, and Taiwan because of varying treatment of those jurisdictions in the reported data.

The final sample consists of 31 countries. The largest number are in Europe (13), followed by South and Central America (7), Asia and the Middle East (6), Africa (4), and Australasia (1).

4. Variables & data

4.1. Dependent Variable

The dependent variable (SITEPTY) is the number of ICC arbitration proceedings held in the country each year by agreement of the parties. In a sizable majority of cases, the parties agree on the place of arbitration.¹⁰ I do not consider the minority of cases in which parties do not agree and in which the place of arbitration is determined instead by the ICC International Court of Arbitration.

The ICC has published data on the place of arbitration chosen by the parties for 1994 through 2000, so that seven years of data are available for each country in the sample. The data consist of aggregate numbers of arbitral proceedings for an entire year. While data on the place of arbitration of individual arbitration proceedings might be preferable, such data is not published by the ICC.¹¹ Although the ICC does publish an

⁹ More than half of the countries in the sample enacted the UNCITRAL Model Law, and a number of the remaining countries enacted statutes that have been described in the arbitration literature as making the country's arbitration law more favorable to arbitration.

¹⁰ 2000 ICC Statistical Report, at 10 ("The place of arbitration was chosen by the parties in 82% of the cases registered in 2000 and by the Court in the remaining 18%").

¹¹ The ICC has declined to provide me with data beyond that published in its annual statistical reports. See also ICC Rules of Arbitration, app. II, art. I(4) (permitting the ICC Court to authorize only "researchers undertaking work of a scientific nature on international trade law to acquaint themselves with *awards and other documents of general interest*" (emphasis added)).

aggregate distribution of the amounts in dispute in ICC arbitrations, it does not publish that data on a country-by-country basis.¹² Thus, this study examines the number of proceedings, not the size of the proceedings.

4.2. Independent Variables

The independent variables (summarized in Table 1) are as follows:

PARTIES: The total number of parties from the country that were involved in ICC arbitrations, either as claimant or respondent, during the year. The expected sign is uncertain. One possibility is that parties may agree to hold arbitration proceedings in one or the other of the parties' home countries in order to reduce travel and other costs (resulting in a positive sign). Or the parties might seek to avoid each other's home country (resulting in a negative sign), "since the general practice is to hold an arbitration in a country that is 'neutral,' in the sense that it is not the country of any of the parties to the dispute" (Redfern & Hunter 1999, p. 284). A complication is that the data used is aggregate data: it might be that countries with large numbers of parties to ICC arbitrations serve as sites for each other, resulting in a positive relationship in the aggregate even if there would be no such relationship in any particular arbitration. The **PARTIES** variable also controls for any overall increase in the number of arbitration proceedings over the years studied and, more generally, for any differences among countries in overall "litigiousness."

¹² See, e.g., 2000 ICC Statistical Report, at 11. In 2000, for example, the amounts in dispute in ICC arbitrations ranged from under \$50,000 to over \$100 million, with more than half of the disputes involving over \$1 million. *Id.*

REGION: The number of parties from other countries in the same region as the country (using regions as defined by the ICC) involved in ICC arbitrations, either as claimant or respondent, during the year. The ICC redefined its reporting regions in 2000. I recalculated the 2000 data using the previously defined regions to ensure consistency with the rest of the data. The expected sign here is positive, because choosing arbitral sites in the same region as at least one of the parties would reduce that parties' travel expenses while maintaining some degree of neutrality. Whether using the regions as defined by the ICC will capture such considerations, however, is uncertain.

WTDSTAT: A variable that equals the product of STAT (a dummy variable equaling one if the country has a new or revised arbitration statute in force in a particular year and zero otherwise) multiplied by the percentage of all contracts giving rise to a dispute that were formed in that year, summed over all years in which contracts giving rise to a dispute were formed.

As noted above, parties commonly agree on the place of arbitration in an arbitration clause contained in their underlying contract. However, it may be a number of years from when parties enter a contract until a dispute arises under that contract. For example, in proceedings filed with the ICC in 2000, the amount of time between contract formation and the filing of an arbitration proceeding typically was from two to four years.¹³ Indeed, one contract giving rise to an arbitration proceeding in 2000 was formed in 1947, more than fifty years earlier.¹⁴ Thus, there may be a significant lag between

¹³ 2000 ICC Statistical Report, at 10.

¹⁴ Id.

when a country enacts a new or revised arbitration statute and when disputes arise under contracts formed after enactment.

To control for such a lag, the variable WTDSTAT was constructed, using data published by the ICC on the dates of contracts giving rise to disputes in each year studied. Take, for example, Belarus, which enacted a new arbitration statute in 1999. For the years 1998 and before, the value of WTDSTAT is zero because STAT equals zero. In 1999, STAT equals 1 (Belarus enacted a new arbitration statute that year). Of disputes that went to ICC arbitration in 1999, twenty-three (or 4.6 percent) arose out of contracts entered into in 1999.¹⁵ Accordingly, the value of WTDSTAT for Belarus in 1999 is 0.046. In 2000, thirty-seven disputes that went to ICC arbitration arose of contracts formed in 2000, and another sixty-nine were formed in 1999, for a total of 106 (or 19.6 percent).¹⁶ Thus, the value of WTDSTAT for Belarus in 2000 is 0.196. The maximum value possible for WTDSTAT is 1.00, although it is never reached in the sample.

If enactment of a new or revised statute results in an increase in the number of arbitration proceedings in the country, the estimated coefficient on WTDSTAT will have a positive sign.

WTDNYC: A variable that equals the product of NYCONV (a dummy variable equaling one if the New York Convention is in force in the country in a particular year and zero otherwise) multiplied by the percentage of all contracts giving rise to a dispute

¹⁵ 1999 ICC Statistical Report, at 12.

¹⁶ 2000 ICC Statistical Report, at 10.

that were formed in that year, summed over all years in which contracts in dispute were formed.

The explanation for WTDNYC is the same as for WTDSTAT above, except that the dummy variable reflects whether the New York Convention was in force in the country during the relevant time. As a general matter, I expect the coefficient on WTDNYC to have a positive sign, because the fact that a country is a party to the New York Convention is important in enhancing the enforceability of an arbitration award made in the country. For several reasons, however, this benefit of the New York Convention may be difficult to capture empirically. First, a number of the countries in the sample (and all of the “major” arbitration countries, as defined below), ratified the New York Convention long before the time period studied here. For the major arbitration countries, for example, the mean of WTDNYC was 0.98 (out of 1.00) with a standard deviation of 0.032. Thus, it may be difficult to differentiate between the countries studied on that basis. Second, the New York Convention only matters if the prevailing party seeks to enforce the award abroad. But there is no way to tell from the data the number of cases in which the parties intended to seek international enforcement. Third, in an increasing number of countries, the national arbitration law is as favorable (if not more favorable) to enforcement of arbitration awards as the New York Convention. As a result, the New York Convention may be less important than it used to be for parties deciding on an arbitral venue.

WTDGNIPC: Gross national income (formerly gross national product) per capita at purchasing power parity rates in current international dollars, weighted over ten years based on the percentage of contracts formed in those years giving rise to disputes.

This variable is a proxy for the infrastructure in the country to support the holding of arbitration proceedings. As such, I expect the sign to be positive, as countries with better infrastructure will be more attractive venues for arbitration proceedings.

WTDPOP: Total population of the country, weighted the same as WTDGNIPC. The expected sign is uncertain. More populous countries may have more opportunities to serve as the place of arbitration, resulting in a positive sign. Or less populous countries may be perceived as more neutral and thus be more likely to be acceptable to both parties, resulting in a negative sign.

4.3. Data

Data on the number of ICC arbitrations held in each country in the sample, as well as on the number of parties to ICC arbitrations from the country and from other countries in the same region, come from annual ICC Statistical Reports (1994-2000). Information on arbitration statutes comes from Smit & Pechota (2001).¹⁷ UNCITRAL (2001) identifies the jurisdictions in which the New York Convention is in force. Gross national income and population data come from The World Bank, 2000 World Development Indicators CD-ROM, updated with data available on the World Bank web site.¹⁸

Summary statistics for the full sample appear in Table 2. The mean number of ICC arbitration proceedings held by party agreement in countries in the sample is 2.37 per year, with a minimum of 0 and a maximum of 48.

¹⁷ See also International Council for Commercial Arbitration (2002).

¹⁸ See <www.worldbank.org>.

5. Results

5.1. Basic findings

Table 3 presents the results of estimating a fixed effects model using the full sample.¹⁹ As predicted, the coefficient on WTDGNIPC has a positive sign, and is highly significant (at the .01 significance level). Thus, countries with higher GNI per capita (a proxy for the infrastructure and facilities available) are more likely to be chosen as arbitral sites.²⁰

The coefficient on WTDSTAT, the variable of interest here, is significant at the .05 significance level and of the expected sign.²¹ The estimated increase in arbitration proceedings is small in absolute numbers. The coefficient on WTDSTAT is 1.6755, indicating that when WTDSTAT equals one (its maximum value, which it never reaches in the sample), on average fewer than two additional ICC arbitration proceedings are held in the jurisdiction each year. On the other hand, in percentage terms the effect is relatively large. At the mean value of WTDSTAT, enactment of a new or revised arbitration statute increases the number of ICC arbitration proceedings by 18.39 percent over the mean number of proceedings in the sample.

To consider whether the numerous countries in the sample with few arbitration proceedings dilute the effect of new arbitration statutes, I reestimated the models using

¹⁹ For an overview of panel data estimation techniques, see Greene (2000, ch. 14).

²⁰ The coefficients on PARTIES, REGION, WTDNYC, and WTDPOP were not statistically significant.

²¹ To check for the sensitivity of the results to the specification of the statutory variable, I reestimated the models using the variable YRSSTAT (the number of years since the country enacted a new or revised arbitration statute) instead of WTDSTAT. YRSSTAT takes an alternative approach to dealing with the time lag issue discussed above, by implicitly assuming a linear increase in the number of contracts giving rise to disputes each year. Like WTDSTAT, YRSSTAT has a positive sign and is significant at the .05 significance level. See Table 3.

sub-sample of “major” arbitration countries, defined based on the number of arbitration proceedings held in the countries.²² Summary statistics for the major arbitration countries are in Table 4. The mean number of ICC arbitration proceedings is much greater for the major countries than for the sample as a whole: major countries average 7.714 arbitration proceedings per year, as compared to the average for the full sample of 2.369.

Table 5 reports results from fixed effects models for the sub-sample of major arbitration countries.²³ WTDGNIPC no longer is statistically significant. Instead, the coefficient on WTDPOP is significant at the .10 or .05 significance level (depending on the model) and has a negative sign. Thus, among major arbitration countries, all else equal, less populated countries are chosen more frequently as the location for arbitration proceedings. The coefficient on WTDSTAT is positive and statistically significant.²⁴ Not surprisingly, the estimated effect is larger than the estimate for the full sample in both absolute terms (the coefficient ranges from 7.9322 to 10.0178) and in percentage terms.²⁵

These estimates should reflect the minimum increase in arbitration business resulting from enactment of a new or revised arbitration statute. The ICC is only one (albeit the most prominent) of a number of institutions administering international

²² “Major” arbitration countries in the sample are Belgium, Egypt, Greece, India, Indonesia, Italy, Singapore, Sweden, and the United Kingdom.

²³ By contrast, in fixed effects models using the sub-sample of “minor” arbitration countries (all countries in the sample other than the major countries), none of the coefficients is statistically significant (results not reported).

²⁴ The significance level varies from .01 to .10, depending on the other variables in the model.

commercial arbitration proceedings. Indeed, it may be that national arbitration institutions in a country benefit more when the country enacts a new arbitration statute than does the ICC. A full picture of the effect of new or revised arbitration laws would require similar estimates to those done here using data from other arbitration institutions. Unfortunately, at present only the ICC publishes data sufficient to undertake such a study.

These results do suggest that the effect of new arbitration statutes is not limited to the earliest countries to modernize their arbitration laws. The countries studied here enacted new or revised statutes from 1994 through 1999, well after the promulgation of the UNCITRAL Model Law in 1985 and its enactment in countries such as Canada (1986), Australia (1989), and others.²⁶ It may be that those countries benefited even more from their earlier enactments, but, again, data limitations preclude any test of that possibility here.

5.2. Estimating economic benefits

As noted above, the available data are insufficient to estimate how a new arbitration law affects the size, as opposed to the number, of proceedings. Information on the size of the proceedings (as measured by the amount in dispute) would be useful because the economic benefits to the country in which the arbitration is held will be positively correlated with size of the proceeding. Under the ICC Rules (app. III, art. 4), arbitrators' fees are based, subject to adjustment, on the amount in dispute. In addition,

²⁵ At the mean value of WTDSTAT, enactment increases the number of ICC arbitration proceedings by 26.95 percent over the mean (using the estimated coefficient on WTDSTAT of 8.3497).

²⁶ See Drahozal (2000, table 3).

cases with greater amounts in dispute are likely to be more complex cases, requiring more hearing time and support resources at the place of arbitration.

A very rough estimate of the economic benefit can be obtained on the assumption that the additional arbitration proceedings following enactment are of the median size of ICC arbitrations generally, with amounts in dispute of approximately \$1,000,000.²⁷ The fees per arbitrator for an arbitration of that size range from \$11,250 to \$53,500.²⁸

Assume further that: (1) one-half of any additional proceedings involve a sole arbitrator and one-half involve a three-arbitrator panel, as is typical in ICC arbitrations;²⁹ (2) on average, one-half of the arbitrators on a three-arbitrator panel and three-quarters of sole arbitrators are from the country in which the proceedings are held;³⁰ (3) the arbitrators' fees are at the median of the ICC range (\$32,375); and (4) logistical costs and fees to

local attorneys and expert witnesses roughly equal the arbitrators' fees in the arbitration. Under those assumptions, the average benefit to the place of arbitration from each

additional arbitration proceeding involving a sole arbitrator would be \$48,562.50, while the economic benefit from each additional proceeding involving a three-arbitrator panel would be \$97,125. If a new arbitration statute resulted in an increase in ICC arbitration proceedings of up to eight per year (as estimated above for major arbitration countries), the benefit would total only \$582,750, well below the high-end estimates by some

²⁷ 2000 Statistical Report, at 11.

²⁸ Craig et al. (2000, table 9B).

²⁹ 2000 Statistical Report, at 8.

³⁰ This assumption is consistent with the findings in Drahozal (2003).

supporters of arbitration laws.³¹ However, the estimate considers only ICC arbitration proceedings, and not proceedings administered by other arbitration institutions or ad hoc proceedings, and thus likely represents the minimum benefit that results.

6. Conclusion

This article finds that a country which enacts a new or revised arbitration statute experiences a statistically significant increase in the number of ICC arbitration proceedings held by party agreement in the country. Because the published data are only for ICC arbitrations and not arbitrations administered by other institutions (or ad hoc arbitration proceedings), the estimates here likely reflect the minimum increase that results. In absolute numbers, the estimated increase is small, with roughly two additional arbitrations in the full sample and from eight to ten more arbitrations in major arbitration countries. That is not surprising, given the relatively small number of ICC arbitration proceedings held worldwide in any given year. In percentage terms, by comparison, the estimated effect is greater, ranging from 18.39 percent for the full sample to 26.95 percent for the major arbitration countries. Because of the small number of arbitrations involved, the estimated economic benefit to arbitral sites from new or revised arbitration statutes is substantially smaller than some have suggested, although data limitations make translating the increase in the number of arbitrations into monetary terms inexact.

³¹ Moreover, the additional revenue is not the same as economic profit, as it “would largely represent compensation for the opportunity costs of the goods and services provided by its residents.” Kahan & Kamar (2002).

Acknowledgements

Thanks to Ted Juhl, Jack Coe, Ben Davis, and two anonymous referees, as well as participants at the 2002 Annual Meeting of the Canadian Law & Economics Association and a faculty workshop at the University of Limerick, for helpful comments and discussions.

References

1994-2000 statistical reports. *ICC International Court of Arbitration Bulletin*, May 1995-Spring 2001.

Bebchuk, L. & Cohen, A (2003). Firms' decisions where to incorporate. *Journal of Law & Economics*, forthcoming.

Bebchuk, L., et al. (2002). Does the evidence favor state competition in corporate law? *California Law Review*, 90, 1775-1821.

Bebchuk, L.A. & Hamdani, A. (2002). Vigorous race or leisurely walk: reconsidering the competition over corporate charters. Harvard Law School, Discussion Paper.

Berger, K.P. (1993). *International economic arbitration*. Deventer [Netherlands]; Boston: Kluwer Law & Taxation Publishers.

Bond, S.R. (1990). How to draft an arbitration clause (revisited). *ICC International Court of Arbitration Bulletin*, Dec. 1990, 14-21.

Bühning-Uhle, C. (1996). *Arbitration and mediation in international business*. The Hague: Kluwer Law International.

Carbonneau, T.E. (2000). *Cases and materials on the law and practice of arbitration* (2d ed.). New York: Juris Publishing, Inc.

Craig, W.L., et al. (1990). *International chamber of commerce arbitration* (2d ed.). Dobbs Ferry, N.Y.: Oceana Publications, Inc.

Craig, W.L., et al. (2000). *International chamber of commerce arbitration* (3d ed.). Dobbs Ferry, N.Y.: Oceana Publications, Inc.

Dezalay, Y. & Garth, B.G. (1996). *Dealing in virtue: International commercial arbitration and the construction of a transnational legal order*. Chicago: University of Chicago Press.

Drahozal, C.R. (2000). Commercial norms, commercial codes, and international commercial arbitration. *Vanderbilt Journal of Transnational Law*, 33, 79-146.

Drahozal, C.R. (2003). Arbitrator selection and regulatory competition in international arbitration law. University of Kansas School of Law, Working Paper.

Greene, W.H. (2000). *Econometric analysis* (4th ed.). Upper Saddle River, N.J.: Prentice Hall.

International Council for Commercial Arbitration (2002). *International handbook on commercial arbitration*, Vols. I-IV. The Hague: Kluwer Law International.

Kahan, M. & Kamar, E. (2002). The myth of state competition in corporate law. *Stanford Law Review*, 55, 679-749.

Nottage, L. (2000). The vicissitudes of transnational commercial arbitration and the *lex mercatoria*: A view from the periphery. *Arbitration International*, 16, 53-78.

O'Hara, E.A. & Ribstein, L.E. (2000). From politics to efficiency in choice of law. *University of Chicago Law Review*, 67, 1151-1232.

Park, W.W. (1998). Arbitration avoids 'hometown justice' overseas. *National Law Journal*, May 4, 1998, C18.

Redfern, A. & Hunter, M. (1999). *Law & practice of commercial arbitration* (3d ed.). London: Sweet & Maxwell.

Reisman, W.M., et al. (1997). *International commercial arbitration*. Westbury, New York: Foundation Press, Inc..

Romano, R. (1993). *The genius of american corporate law*. Washington, D.C.: AEI Press.

Romano, R. (2001). The Need for Competition in International Securities Regulation. *Theoretical Inquiries in Law* 2, 387.

Rules of Arbitration of the International Chamber of Commerce (in force Jan. 1, 1998).

Sanders, P. (1996). Arbitration, in: Cappelletti, M. (Ed.), *International encyclopedia of comparative law*, Vol. XVI-12. Tübingen: J.C.B. Mohr (Paul Siebeck) & Dordrecht: Martinus Nijhoff Publishers.

Smit, H. & Pechota, V. (2001). *Smit's guides to international arbitration: National arbitration laws*, Vol. 1. New York: Juris Publishing, Inc.

United Nations Commission on International Trade Law (2001). Status of conventions and model laws <www.uncitral.org/english/status/Status.pdf>.

Table 1
Variable Definitions

Dependent Variable SITEPTY	Number of ICC arbitration proceedings held in country during year by agreement of parties
Independent Variables PARTIES	Number of parties from country involved in ICC arbitration proceedings during year
REGION	Number of parties from other countries in the same region (as defined by the ICC) as the place of arbitration involved in ICC arbitration proceedings during year
WTDSTAT	The product of STAT (a dummy variable equaling one if the country has a new or revised arbitration statute in force in a particular year and zero otherwise) multiplied by the percentage of contracts giving rise to a dispute that were formed in that year, summed over all years in which contracts in dispute were formed
YRSSTAT	Number of years since country enacted new or revised arbitration statute, with the year of enactment counted as one
WTDNYC	The product of NYCONV (a dummy variable equaling one if the New York Convention is in force in the country in a particular year and zero otherwise) multiplied by the percentage of contracts giving rise to a dispute that were formed in that year, summed over all years in which contracts in dispute were formed
WTDGNIPC	Gross national income (formerly gross national product) per capita, at purchasing power parity rates in current international dollars, weighted over ten years based on the percentage of contracts formed in those years giving rise to disputes
WTDPOP	Total population, weighted over ten years based on the percentage of contracts formed in those years giving rise to disputes

Table 2
 Summary Statistics – Full Sample

	Observ.	Mean	Std. Dev.	Minimum	Maximum
Dependent Variable					
SITEPTY	217	2.369	6.867	0	48
Independent Variables					
PARTIES	217	9.806	17.619	0	88
REGION	217	178.369	197.496	6	685
WTDSTAT	217	0.260	0.285	0	0.834
YRSSTAT	217	2.111	2.094	0	7
WTDNYC	217	0.821	0.291	0	1
WTDGNIPC	207	7884.506	6544.762	705.244	23,786.27
WTDPOP	217	5.19 e+07	1.61 e+08	500,231.3	9.61 e+08

Table 3
Impact of New or Revised Arbitration Statute on
Parties' Choice of Place of Arbitration – Full Sample

Independent Variables		
Constant	-1.6527 (-0.91)	-1.8020 (-0.95)
PARTIES	0.0989 (1.47)	0.0981 (1.45)
REGION	-0.0054 (-0.86)	-0.0054 (-0.84)
WTDSTAT	1.6755** (2.15)	
YRSSTAT		0.2203** (2.05)
WTDNYC	-0.7191 (-0.97)	-0.6216 (-0.86)
WTDGNIPC	0.00070*** (3.08)	0.00070*** (3.11)
WTDPOP	-2.28 e-08 (-0.79)	-2.29 e-08 (-0.76)
R ²	0.1689	0.1685
Number of Observations	207	207
Country Fixed Effects?	Yes	Yes

Note: t-statistics are in parentheses,
using White standard errors

* Significant at .10 significance level

** Significant at .05 significance level

*** Significant at .01 significance level

Table 4
 Summary Statistics – Major Arbitration Countries

	Observ.	Mean	Std. Dev.	Minimum	Maximum
Dependent Variable					
SITEPTY	63	7.714	11.081	0	48
Independent Variables					
PARTIES	63	27.143	24.705	4	88
REGION	63	357.635	238.794	8	679
WTDSTAT	63	0.249	0.293	0	0.834
WTDNYC	63	0.982	0.032	0.819	1
WTDGNIPC	63	12,878.21	8030.965	1356.698	23,786.27
WTDPOP	63	1.45 e+08	2.78 e+08	2,724,051	9.61 e+08

Table 5
Impact of New or Revised Arbitration Statute on
Parties' Choice of Place of Arbitration – Major Countries

Independent Variables				
Constant	-4.2808 (-0.17)	-7.0696 (-0.31)	9.0418 (1.24)	-11.2446 (-0.48)
PARTIES	0.1136 (1.55)	0.0976 (1.30)	0.1133 (1.56)	0.1126 (1.55)
REGION	-0.0120 (-1.03)		-0.0123 (-1.07)	-0.0096 (-1.02)
WTDSTAT	8.3497* (1.95)	8.4496** (2.03)	7.9322* (1.91)	10.0178*** (2.91)
WTDNYC	16.3383 (0.58)	18.9687 (0.72)		29.3665 (1.26)
WTDGNIPC	0.00042 (0.70)	0.00016 (0.33)	0.00061 (1.28)	
WTDPOP	-7.12 e-08* (-1.82)	-7.36 e-08* (-1.88)	-6.78 e-08* (-1.75)	-8.27 e-08** (-2.22)
R ²	0.0580	0.0549	0.0667	0.0389
Number of Observations	63	63	63	63
Country Fixed Effects?	Yes	Yes	Yes	Yes

Note: t-statistics are in parentheses,
using White standard errors

* Significant at .10 significance level

** Significant at .05 significance level

*** Significant at .01 significance level