ABSTRACTS

Bargaining over BITs, Arbitrating Awards

THE REGIME FOR PROTECTION AND PROMOTION OF INTERNATIONAL INVESTMENT

By BETH A. SIMMONS

The regime for international investment is extraordinary in public international law and controversial in many regions of the world. This article explores two aspects of this set of rules: its decentralization and the unusual powers it gives to private actors to invoke dispute settlement. Decentralization has contributed to a competitive environment for ratification of bilateral investment treaties (BITs) and has elevated the importance of dyadic bargaining power in the formation of the regime. Governments of developing countries are more likely to enter into BITs and tie their hands more tightly when they are in a weak bargaining position, which in turn is associated with economic downturns of the domestic economy. Once committed, investors have sued governments with surprising regularity, arguably contributing disproportionately to legal awards that favor the private corporate actors who have the power to convene the dispute settlement system. States have begun to push back, revising their obligations and attempting to annul arbitral awards. One of the conclusions is that it is important not only to consider whether BITs attract capital—which has been the focus of nearly all the empirical research on BIT effects—but also to investigate the governance consequences of the international investment regime generally.

Evaluating Three Explanations for the Design of Bilateral Investment Treaties

By TODD ALLEE and CLINT PEINHARDT

Although many features of bilateral investment treaties (BITs) are consistent from one agreement to the next, a closer look reveals that the treaties exhibit considerable variation in terms of their enforcement provisions, which legal scholars have singled out as the central component of the treaties. An original data set is compiled that captures three important treaty-design differences: whether the parties consent in advance to international arbitration, whether they allow treaty obligations to be enforced before an institutionalized arbitration body, and how many arbitration options are specified for enforcement. Drawing upon several relevant literatures on international institutions, three potentially generalizable explanations for this important treaty variation are articulated and tested. The strongest support is found for the theoretical perspective that emphasizes the bargaining power and preferences of capital-exporting states, which use the treaties to codify strong, credible investor protections in all their treaties. Empirical tests consistently reveal that treaties contain strong enforcement provisions—in which the parties preconsent to multiple, often institutionalized arbitration options—when the capital-exporting treaty partner has considerable bargaining power and contains domestic actors that prefer such arrangements, such as large multinational corporations or right-wing governments. In contrast, there is no evidence to support the popular hands-tying explanation, which predicts that investment-seeking states with the most severe credibility problems, due to poor reputations or weak domestic institutions, will bind themselves to treaties with stronger investment protections. Likewise, little support is found for explanations derived from the project on the rational design of international institutions, which discounts the identities and preferences of the treaty partners and instead emphasizes the structural conditions they jointly face. In sum, this foundational study of differences across investment treaties suggests that the design of treaties is driven by powerful states, which include elements in the treaties that serve their interests, regardless of the treaty partner or the current strategic setting.

Foreign Direct Investment and Institutional Diversity in Trade Agreements

credibility, commitment, and economic flows in the developing world, 1971–2007

By TIM BÜTHE and HELEN V. MILNER

International trade agreements lead to more foreign direct investment (FDI) in developing countries. This article examines the causal mechanisms underpinning this trade-investment linkage by asking whether institutional features of preferential trade agreements (PTAs), which allow governments to make more credible commitments to protect foreign investments, indeed result in greater FDI. The authors explore three institutional differences. First, they examine whether PTAs that have entered into force lead to greater FDI than PTAs that have merely been negotiated and signed, since only the former constitute a binding commitment under international law. Second, they ask whether trade agreements that have investment clauses lead to greater FDI. Third, they consider whether PTAs with dispute-settlement mechanisms lead to greater FDI. Analyses of FDI flows into 122 developing countries from 1971 to 2007 show that trade agreements that include stronger mechanisms for credible commitment induce more FDI. Institutional diversity in international agreements matters.

The System Worked

global economic governance during the great recession

By DANIEL W. DREZNER

Prior to 2008, numerous international relations scholars had predicted a looming crisis in global economic governance. Policy analysts have only reinforced this perception since the financial crisis, declaring that we live in a "G-Zero" world. This article takes a closer look at the global response to the financial crisis and reveals a more optimistic picture. Despite initial shocks that were more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by outcomes, outputs, or process, formal and informal governance structures displayed surprising resiliency. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies; analysts have conflated national with global governance; and the efficacy of past periods of global economic governance has been badly overestimated. *Why* the system has worked better than expected remains an open question, but we can tentatively conclude that both the power of the United States and the resilience of neoliberal economic ideas were underestimated.

China's "New Regionalism"

subnational analysis in chinese political economy

By MEG E. RITHMIRE

The study of Chinese political economy has experienced a sea change since the late 1990s; instead of debating the origins and direction of national reform, scholars have turned to examining the origins of local economic variation. This article reviews recent work in the regional political economy of contemporary China. In keeping with a movement in comparative politics toward analyzing subnational politics, the "new regionalists" seek to identify and explain meaningful heterogeneity in the Chinese polity and economy. Yet they go further than simply using subnational cases to generate or test theories about Chinese politics. Instead, they propose that subnational political economies in China are a function of endogenous change rather than a reaction to national priorities. After identifying differences between the "new regionalism" and previous studies of decentralization in China, the author discusses this work according to the theoretical approaches (institutional, ideational, and sociohistorical) used to explain the origins of regional differences. She concludes by examining the limitations of the new regionalist agenda in comparative and historical context and suggesting that scholars move past unconditional acceptance of the causal power of "socialist legacies" and instead attend to the importance of changes in the post-Mao administrative hierarchy.