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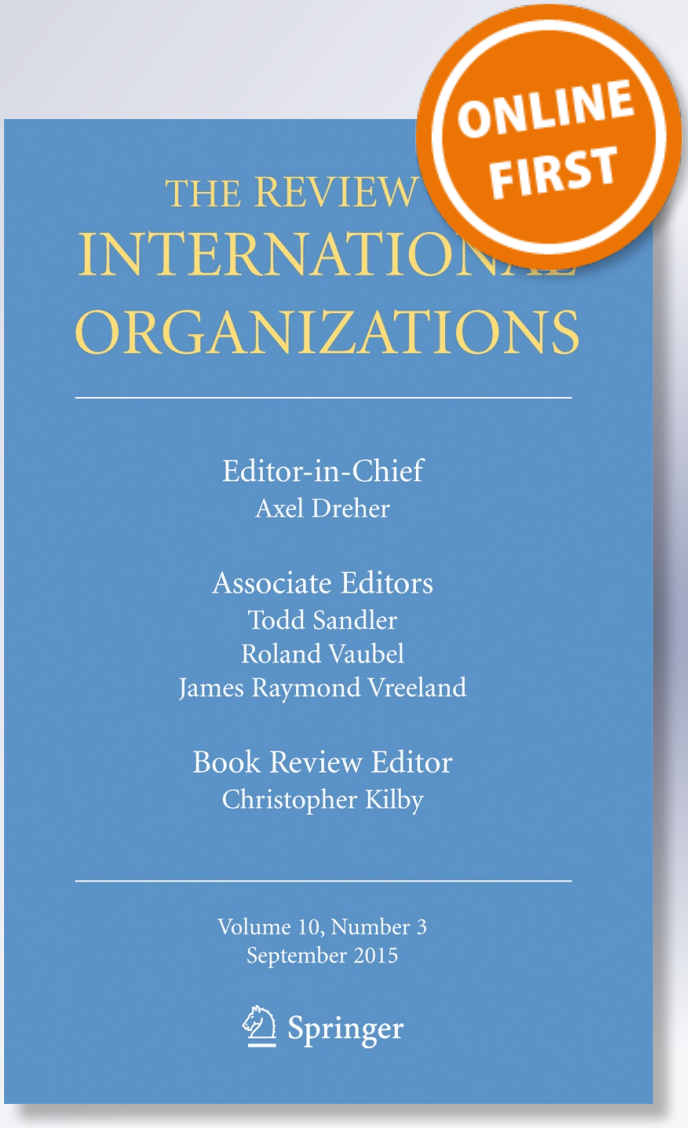

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Promoting trade through private law: Explaining international legal harmonization

Asif Efrat[1]

Abstract A large body of research examines states' efforts to increase international trade through public law, that is, by forming preferential trade agreements (PTAs) that lower governmental barriers to trade. Scholars, however, have overlooked another mechanism through which states seek to facilitate trade: international harmonization of private law. Underlying legal harmonization is the assumption that cross-national variation of commercial law impedes trade; by contrast, similarity of laws across countries encourages trade by reducing uncertainty and transaction costs. I argue that the harmonization of private law acts as a substitute for the public-law channel of stimulating trade: countries with limited PTA partnerships make up for this deficiency by joining initiatives for private-law harmonization. This argument is tested by analyzing the UN Convention on Contracts for the International Sale of Goods-one of the primary instruments of legal harmonization. Indeed, countries that are party to shallow PTAs or have few PTA partners are more likely to ratify this private-law convention. Overall, this article urges scholars of trade and international law to broaden their research agenda to include private law.

Keywords Trade · Preferential trade agreement · Legal harmonization · United nations

International cooperative efforts to facilitate and increase trade have been at the center of the contemporary study of international political economy (IPE). The IPE literature highlights two primary channels through which governments seek to expand international trade. One channel is the multilateral trade regime. The General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO),

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have established the basic rules of the world trading system alongside procedures and mechanisms to give effect to those rules. Since the late 1940s to the present, the multilateral trade regime has brought about a significant decline of trade barriers worldwide (Barton et al. 2006; Goldstein et al. 2007). The second route for fostering trade and economic integration has been the formation of preferential trade agreements (PTAs). Typically established on a bilateral or regional basis, PTAs grant each member-state preferential access to the markets of the other participants. Such arrangements have become increasingly common in the post-World War II world and have seen a dramatic rise in the 1990s and 2000s (Baccini and Dür 2012; Mansfield and Milner 2012).

PTAs and the multilateral trade regime differ in important respects. Most significantly, nondiscrimination is the premise of the multilateral regime: market access agreed to by certain members of the WTO must be extended to all members. PTAs, by contrast, are discriminatory: only member-states can enjoy their benefits. Yet this and other differences between the GATT/WTO and PTAs do not blur their fundamental similarity: Both these mechanisms of trade expansion work through *public law*, as they seek to reduce *governmental* barriers to trade in their various forms, such as tariffs, quotas, and regulatory requirements. Public law is the body of law that governs the relations between private actors – such as individuals or firms – and their government. The establishment or reduction of trade barriers by governments is thus a matter of public law.

Public law, however, is not the only realm through which governments seek to foster trade. Trade is ultimately a commercial activity carried out by private actors. Accordingly, is it subject to the body of law that deals with the legal relationships between private actors, namely, *private law*. More specifically, trade is governed by *commercial law*: the principles, rules, and statutory provisions that bear on the rights and obligations of parties to commercial transactions (Goode et al. 2007, 4). In a world of national legal systems, where each country has its own corpus of commercial law – most important, its own law of contracts – actors transacting across borders face a significant legal diversity that might hinder trade. Unfamiliar with the foreign legal system, a business faces considerable uncertainty about the consequences of the transaction; this uncertainty, in turn, increases the costs of information finding and negotiations and might result in commercial disputes. To overcome the problems and obstacles posed by the cross-national diversity of commercial law, states have pursued *legal harmonization* since the early 20th century. A large number of treaties and other instruments, promulgated by several international organizations (IOs), seek to establish uniform legal rules applicable to transnational commercial matters: from the sale of goods through commercial arbitration to cross-border insolvency. The underlying logic is that the harmonization and convergence of private-law rules provides a clear and certain legal environment that would spur trade.

The efforts for the harmonization of private law have been overlooked by international relations (IR) scholars. IR studies of harmonization typically examine the harmonization of *public* regulatory standards in areas such as finance, internet governance, and the environment (Simmons 2001; Drezner 2007). The gap in the trade literature is particularly acute: this literature has focused exclusively on the public-law track for stimulating trade – GATT/WTO and PTAs – while ignoring states' efforts in the area of private law. In legal scholarship, the picture is the reverse. Legal accounts of

private-law harmonization disregard the public-law measures that states employ to increase cross-border commercial activity (Garoupa and Ogus 2006; Gomez and Ganuza 2012). In short, trade scholars have been looking at a certain part of the picture, whereas legal scholars have seen the other part. Private-law instruments and public-law efforts to enhance trade are two sides of the same coin, and there is much to be gained from studying them *jointly* and understanding their mutual relations. That is what this study sets out to do.

I argue that the public-law and private-law channels of spurring trade serve as policy substitutes. PTAs promise to deliver economic benefits that are more direct and immediate than those expected from uniform private-law rules. However, PTAs are likely to meet stronger political resistance than legal-harmonization initiatives. Governments will thus turn to legal harmonization when the preferred policy mechanism – PTAs – proves insufficient. Specifically, countries whose PTAs establish shallow integration are more likely to join legal-harmonization initiatives; the same for countries that have few PTA partners. This argument is tested through the 1980 UN Convention on Contracts for the International Sale of Goods (CISG), which is one of the primary instruments in the field of legal harmonization. Indeed, shallower PTAs and a lower number of PTA partners are associated with a higher likelihood of ratifying this private-law convention. Uniform legal rules may thus compensate for the insufficiency of trade-liberalization agreements. I also show that they may compensate for the paucity of bilateral investment treaties (BITs).

The contribution of this article is twofold. First, it demonstrates that the trade literature's focus on the GATT/WTO and PTAs has been overly narrow, resulting in an incomplete picture of governments' efforts to boost trade. To paint a fuller picture, we have to examine not only public-law measures to encourage trade, but also private-law instruments that share this goal. Second, this article draws attention to the area of private law, which has been overlooked by the IR literature on international law. That literature has focused on the public functions of law, such as regulating the conduct of warfare or protecting human rights (Simmons 2009; Huth et al. 2011). By contrast, the role of international law in regulating the relations between private actors has received little attention. The analysis of private-law harmonization begins to fill this gap and opens up a new research agenda for scholars of international law as well as trade.

1 International harmonization of commercial law: Background

Dating back to the turn of the 20th century, legal-harmonization initiatives have focused on those areas of commercial law that pertain to transnational commercial transactions, such as procurement and sale of goods, international payments, transport, and insolvency. The primary motivation for harmonization has been to facilitate cross-border transactions by reducing the uncertainty and transaction costs associated with them. Underlying this goal is the assumption that international legal heterogeneity acts as an impediment to commerce. "The requirements and quirks of a foreign legal system with which [one] is not familiar may harbour unexpected surprises for the unsuspecting business" (Eiselen 1999, 323). This lack of familiarity with the laws and regulations applicable to the "foreign part" of the transaction might deter one from entering the transaction or would force them to incur the costs of obtaining the relevant information

and learning about the meaning and legal consequences of explicit and implicit contract terms. The lack of legal uniformity may ultimately lead to misunderstandings and disagreements that will result in disputes and litigation; it may also result in increased ex-ante costs of embodying contracting solutions in written agreements. The parties will have to bargain over the legal regime that will govern their transaction and, specifically, over the set of default rules that will be included as implied terms in their contract. The legal regime that is ultimately selected will be relatively unfamiliar to at least one of them (Reich 1998; Gillette and Scott 2005).

Legal harmonization aims to solve this problem by providing uniform legal rules that will be consistently applied whenever and wherever a transnational commercial dispute may arise. These uniform rules supply a standard language in which solutions to common contracting problems are cast. This standard language reduces the contract-drafting costs; it also lowers the uncertainty about the parties' rights and obligations and about the likely solution of future disputes, if courts interpret and apply the standard language in a consistent manner (Eiselen 1999; Gillette and Scott 2005). Overall, the purpose of harmonized commercial law is to simplify the legal foundation of trade and to allow the parties to save resources and to avoid controversy about the choice of law applicable to their transaction. Harmonized law should be easy to find, understand, and comply with, thereby reducing transaction costs and risk and increasing certainty. "If all states related to the transaction apply the same law … traders will have the clear and certain [legal] regime that they need for doing business" (Reich 1998). The removal of obstacles resulting from the complexity of different legal regimes should, in turn, encourage cross-border economic activity and spur trade.

A variety of regional and global organizations are involved in the harmonization of commercial law. A particularly important role is that of the United Nations Commission on International Trade Law (UNCITRAL), established in 1966 as a commission of the UN General Assembly whose goal is "the promotion of the progressive harmonization and unification of the law of international trade."[1] Early on, UNCITRAL designated the following as priority subject-areas for harmonization: international sale of goods, international commercial arbitration, and international payments. Other topics, such as trade-financing contracts, electronic commerce, insolvency, and secured transactions have been added subsequently (UNCITRAL 2013, 11). To date, UNCITRAL has produced ten conventions, eight model laws, and additional guides and texts. Among those instruments, the Convention on Contracts for the International Sale of Goods – the CISG – stands out as one of the most important. Given the significant number of countries that have ratified the convention and the number of judicial decisions that have applied it, the CISG is seen as "one of the success stories in the field of the international unification of private law" (Huber 2006; Schwenzer and Hachem 2009; Rogers and Lai 2014, 15).

1.1 Convention on the international sale of goods

Among all areas of commercial law, the international sale of goods – the core of trade relations – has received considerable attention within the harmonization project (Eiselen 1999, 335). Domestic laws relating to international sales constitute the basic

[1] General Assembly Resolution 2205 (XXI), December 17, 1966.

legal framework for the cross-border exchange of goods. However, critics have judged these laws as ill-suited for the needs of a growing international trade given their often antiquated nature and, most important, their considerable diversity across countries (Audit 1998; Honnold 1999, 21–22). Following two failed attempts to harmonize sales law in the 1960s,[2] the CISG was established in 1980 and entered into force in 1988.

Aiming to regulate transnational commercial transactions and facilitate trade, the CISG applies to *international* contracts, that is, contracts of sale of goods between private businesses located in different countries. Certain types of contracts, such as most consumer sales, are excluded from this scope of application. In terms of substance, the CISG essentially governs three areas: the formation of the contract; the obligations of the seller; and the obligations of the buyer. The convention addresses several questions that arise in the formation of a contract by the exchange of an offer and an acceptance; it lays out the seller's obligations, including delivery of the goods in conformity with the quantity and quality stipulated in the contract, as well as related documents, and transferring the property in the goods; and it details the buyer's obligations: to pay the price for the goods and take delivery of them. The parts dealing with the seller's and buyer's obligations also include the core element of any sales law: remedies for breach of contract by the seller or the buyer. The remedies are generally similar in both cases: if all required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages, or avoid the contract. The buyer may also exercise the right to lower the price if the goods delivered do not conform to the contract (Huber 2006; UNCITRAL 2010). Ratification of the convention incorporates it into the domestic legal system of the ratifying state (Rogers and Lai 2014, 14), and the convention automatically applies to any international contract that comes under its scope. However, its application is not mandatory: parties to a contract are free to exclude the application of the convention or derogate from its provisions.

Proponents of the CISG have trumpeted what they perceive as its advantages and benefits. For them, the convention promotes legal clarity and certainty and prevents businesses' need to contend with foreign law that is not understandable or accessible. It levels the playing field by providing a single set of rules that is fairly simple, flexible, and easily accessible; ensures a fair distribution of rights, duties, and risks; and lowers the risk of disputes between transacting parties (Reich 1998; Eiselen 1999). The promise of such benefits has led 83 countries to join the convention (as of July 2015), spanning all regions of the world. The countries of Europe and the Americas constitute the majority of members; but the convention also has members in Africa, the Middle East, the Caucasus, East Asia, and the Pacific. Among the parties to the convention are major powers – including the United States, China, France, and Germany – as well as smaller countries. To date, the convention's uniform rules for international sales have been used in more than 2800 published judicial and arbitral decisions, and they have served as a model for regional and domestic law reforms (Rogers and Lai 2014, 19; Meyer 2014).

[2] Two conventions established by UNIDROIT in 1964 achieved few ratifications: Convention relating to a Uniform Law on the International Sale of Goods and Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods. UNIDORIT – International Institute for the Unification of Private Law – is an IO that promotes legal harmonization.

Despite the continuously growing membership of the CISG, some 100 countries have not yet ratified the convention. This raises a puzzle: Who seeks legal harmonization? Why do certain countries take advantage of this instrument as a means to boost trade, while others decline to do so? Before offering and testing a new answer to this question, I review the answers offered by the existing literature.

2 Existing explanations of international legal harmonization

Harmonization of the substantive rules of private law has generally received little attention from IR scholars who have focused, instead, on the harmonization of *public* regulatory standards (Singer 2007; Bach and Newman 2010). In contrast to IR scholarship, the law and economics literature has given considerable attention to the issue of private-law convergence, which may be achieved through two channels: a cooperative process of harmonization that involves a mutual agreement on some common legal ground; or the unilateral transplantation or adoption of foreign law into one's legal system. This literature suggests that competition between legal systems, as well as businesses' pressure to minimize legal costs, may motivate countries to adapt to the legal rules and practices of their main commercial partners by changing their own legal order (Garoupa and Ogus 2006, 340). However, any incentive for convergence must be weighed against the costs of adjusting legal rules and practices: the direct costs of acquiring information about foreign law and importing it (e.g., drafting new legislation); the rent-seeking costs of those who would be harmed by changes to the existing rules – such as lawyers who will no longer control the supply of domestic legal skills; a potential loss of coherence and consistency in the legal system, since some areas of the law will see more change than others; as well as social and political adaptation costs. For example, legal harmonization might be seen as a threat to the local legal culture, as a loss of sovereignty, or as a form of foreign imperialism. Furthermore, if harmonization is achieved through an instrument that allows little flexibility, the government may find it difficult to amend or repeal the law in accordance with shifting political needs (Rose 1996; Carbonara and Parisi 2007, 370). Ultimately, the pressures for harmonization give rise to a coordination game: Which country's laws should be chosen as the basis for convergence? (Garoupa and Ogus 2006; Herings and Kanning 2008). This coordination game, however, might fail to produce an equilibrium of harmonization.[3]

While existing studies of legal harmonization have considerable merit, they suffer from two important flaws. First, they do not offer or test a clear argument that may explain the cross-national variation in governments' willingness to join harmonization projects. Second, existing accounts examine harmonization efforts in isolation, overlooking their possible ties to other trade-enhancing means. Indeed, harmonization instruments are part of a broader set of tools that states employ in an attempt to encourage transnational commercial activity. The resort to harmonization may be influenced by the other trade-facilitating mechanisms that states have at their disposal. In the next section, I offer an argument that situates harmonization efforts in the broader context of governments' attempts to boost trade. Specifically, I highlight the choice

[3] See, for example, an analysis of the difficulties in harmonizing contract law across the European Union. Low (2012); O'Connor (2012).

between legal harmonization and PTAs as two routes to the same goal: increased trade. This argument is then empirically tested as an explanation for the cross-national variation in the ratification of the CISG.

3 Legal harmonization as an alternative to PTAs

The literature on the political economy of trade highlights the multilateral trade regime as the primary alternative to PTAs. Several works by political scientists have indeed examined the interrelationship between preferential trade agreements and multilateral trade liberalization. Mansfield and Reinhardt (2003) argue that the GATT/WTO induces its members to form PTAs in order to obtain bargaining leverage within the multilateral regime. Manger (2009) claims that PTAs are not merely a second-best alternative to the stalled negotiations at the WTO. Rather, they have their own benefits, such as facilitating the flow of foreign direct investment from North to South. Mansfield and Reinhardt (2008) suggest that both the WTO and PTAs serve to reduce the volatility of international trade, with a resulting trade-enhancing effect. Davis (2009) argues that the overlap between the WTO and PTAs creates a selection dynamic, by which the most difficult trade issues are discussed at the WTO. Economists have also explored the impact of PTAs on trade multilateralism and vice versa (Baldwin 2006; Fugazza and Robert-Nicoud 2010; Saggi and Yildiz 2011).

Whereas the interrelationship between PTAs and the WTO has received considerable attention, another alternative to PTAs – international legal harmonization – has been overlooked by the IPE literature. I now turn to analyzing the costs and benefits of legal harmonization, and the political dynamic surrounding them – all in comparison to those of PTAs.

3.1 Benefits and supportive constituencies

3.1.1 PTAs

Setting aside the possible political or security benefits of PTAs (Mansfield and Pevehouse 2000; Bearce 2003; Hafner-Burton 2009), the primary justification for the formation of these agreements is economic: the reduction of barriers to trade is supposed to enhance economic welfare. This assumption has been put to the test in a large number of studies, which have failed to produce an unequivocal verdict. Some studies suggest that PTAs have a trade-diverting effect (Grossman and Helpman 1995; Romalis 2007), whereas others contend that PTAs result in trade creation (Baier and Bergstrand 2007; Magee 2008).

Although the aggregate economic benefits of PTAs are not entirely certain, states typically enter these agreements with the expectation of reaping some benefits (Mansfield and Milner 2012, 9). While the gains may not, in the end, be realized, ex-ante they seem to be within reasonable reach. This expectation of gains has profound political implications: it means that PTAs enjoy the support of certain constituencies and that entering them may be politically rewarding for governments. Among those expected to gain from PTAs, exporters have a pride of place. Export-oriented industries are strongly motivated to press for reciprocal trade agreements in order to gain market

access abroad (Gilligan 1997; Chase 2003; Dür 2010). Some argue that multinational corporations may also seek PTAs to protect their global trading and production networks (Manger 2009). Producers that use imports in the process of production are also expected beneficiaries of trade-liberalizing PTAs, as are consumers who will likely pay less for imported goods. Indeed, while the public's support for trade liberalization generally varies within and across countries, it is, on the whole, substantial (Baker 2003; Heinmueller and Hiscox 2006; Kono 2008; Mansfield and Milner 2012, 31).

The support from pro-liberalization groups and from the public fosters a political climate that is often favorable to PTAs. Such support may provide governments with the incentives to negotiate, conclude, and ratify PTAs. Mansfield and Milner (2012), for example, argue that PTAs constitute an assurance mechanism. By entering a PTA, a government can commit to a lower level protectionism and signal to voters that trade policy is not solely determined by special interests. Voters are thus less likely to blame the government for economic downturns and to vote it out of office. More broadly, democratic governments have incentives to enact liberal trade policies in order to garner popular support (Milner and Kubota 2005). Indeed, notwithstanding the scholarly controversy over the actual economic impact of PTAs, the case in their favor seems straightforward and compelling: tariffs and other trade barriers reduce trade; agreements that commit members to removing barriers should thus enhance trade. The perception that PTAs encourage cross-border exchange makes them politically expedient for governments. PTA membership can therefore improve the government's prospects of political survival (Hollyer and Rosendorff 2012). It may also allow the government to overcome domestic obstacles to economic reform (Baccini and Urpelainen 2014).

3.1.2 Legal harmonization

Given the dearth of economic research on legal harmonization, its economic benefits are even less certain than those of PTAs. The key assumption underlying harmonization efforts is that legal diversity increases uncertainty and transaction costs, thereby impeding trade. This assumption seems intuitively appealing and it has indeed inspired a variety of harmonization projects: from the Roman law, which unified the rules of commerce for the Roman Empire and Byzantium, through the United States' Uniform Laws, such as the Uniform Commercial Code. This assumption, however, has seen little study or testing, and the magnitude of legal diversity's detrimental impact has not been quantified. It is therefore unclear to what extent legal diversity indeed reduces trade and whether the remedy of legal harmonization actually offers meaningful benefits – or at least benefits that are large enough to justify the costs of legal adjustment and additional costs, as described below (Nottage 2005, 829; Smits 2014, 606).

Since the benefits of legal harmonization are uncertain, it does not enjoy the same domestic support as PTAs. First and foremost, harmonization does not promise to lower the price of goods for consumers. Indeed, harmonized laws may still benefit consumers by establishing minimum consumer protections. Yet overall, consumers are unlikely to be strong supporters of harmonization, as they poorly understand the relationship between harmonization and increased trade and pay little attention to the laws governing transactions. Legal harmonization thus holds less appeal for consumers than the direct and tangible benefit of reduced prices through PTAs. Ultimately, the main

beneficiaries of legal harmonization are firms, as legal uniformity promises to facilitate their cross-border transactions. Yet firms may doubt the wisdom and utility of harmonization. Harmonization might cement ineffective legal policies, and it might poorly suit diverse contract environments (O'Connor 2012). Indeed, efficient legal rules could vary with the attributes of the contracting environment, such as the incidence of stranger versus close-knit trading (Bernstein 2001; O'Hara 2005); harmonization would jeopardize such a beneficial legal variation. Most importantly, some firms – those engaged in sophisticated commercial transactions, as opposed to trade with consumers – have an alternative way of reducing legal uncertainty: including a choice-of-law clause in their contracts. Choice-of-law clauses allow firms to choose among diverse options of substantive law and tailor their choice to the specific transaction and legal environment. While choice-of-law clauses entail costs of legal research and negotiation – costs that harmonization eliminates – some firms may still prefer choice-of-law to legal harmonization. The upshot is that firms are unlikely to strongly lobby for harmonized rules. Whereas PTAs enjoy the backing of commercial interests with a clear stake in foreign market access, support for harmonization efforts might be more ambivalent and lukewarm (Low 2012).

Overall, given that both firms and voters may be unenthusiastic about legal harmonization, the latter's political utility is modest. Legal harmonization lacks the signaling quality of PTAs; unlike PTAs, it is not a visible commitment to restrict protectionism (Mansfield and Milner 2012). Joining harmonization efforts may, perhaps, promote trade, but it is unlikely to considerably enhance the government's political support.

3.2 Costs

PTAs create distributional winners and losers. The losers bear direct and substantial costs: the lowering of trade barriers results in greater import competition that threatens certain firms and industries. These costs typically motivate these interests to oppose PTA membership and lobby against it. The implications for the government are the loss of these interests' support and, possibly, greater difficulty in ratifying PTAs and putting them into effect. Ratification and implementation of PTAs require the formal or informal approval of domestic veto players, and the interests opposing the PTA may try to undermine the agreement through their influence on veto players. For instance, certain members of the legislature may try to block ratification on behalf of the opposing interests. The need to overcome such resistance increases the domestic political costs borne by the government (O'Reilly 2005; Mansfield et al. 2007; Mansfield and Milner 2012, 40, 55–57).

Things look different for legal harmonization. Like any trade-promoting policy, harmonization might ultimately create losers. However, it is difficult to identify them in advance. Unlike trade-barrier reduction, harmonizing the legal rules that govern international sales does not immediately or obviously harm any particular firm. One reason is that a legal rule often permits alternative interpretations and results. Second, firms that buy or sell in international markets "are generally not at loggerheads about ideal law. Buyers in one transaction, after all, are likely to be sellers in the next" (Gillette and Scott 2005, 448, 460). Whereas PTAs are marked by an intense conflict between groups with different preferences, the actors with a stake in international sales law – buyers and sellers – are not entirely distinct groups with competing interests.

Harmonization instruments are thus less contentious domestically than PTAs: they are not in obvious tension with the interests of any domestic constituency and are therefore less likely to meet political resistance.

The flexibility mechanisms built into harmonization instruments further facilitate their acceptance. Indeed, the WTO and PTAs also afford contracting parties some leeway through escape clauses that allow a temporary suspension of commitments (Rosendorff and Milner 2001; Pelc 2009; Kucik 2012). Yet the flexibility of legal-harmonization instruments is greater, since these instruments offer the parties only *default* rules to facilitate the transaction; they do not seek to impose rules contrary to the parties' wishes. Respecting the principle of party autonomy, uniform law often allows contracting parties to opt out of the law or of specific provisions that they disfavor. The parties are free to make adjustments or supplant the uniform rule with their own terms to govern the transaction. Allowing individual parties to opt out is consistent with the goal of minimizing contracting costs by providing parties only with the terms they prefer. The CISG, for example, explicitly states that the "parties may exclude the application of this Convention or … derogate from or vary the effect of any of its provisions."[4] The CISG also grants states the option of opting out of certain provisions to which they object.[5]

An added source of flexibility in harmonization instruments is the common use of broad, open-ended standards that allow significant variation in the interpretation and application of the formally uniform law. Countries with different legal systems and cultures can all interpret vague terms or ambiguous language in an unobjectionable manner, consistent with their domestic legal principles. The CISG, for example, often employs an ambiguous language. An example is the repeated use of "reasonableness": Rights and obligations are defined by what is "reasonable" or "unreasonable"; action and notices are required within "reasonable time."[6]

All this by no means implies that harmonization instruments raise no domestic controversy or that their domestic acceptance is easy and costless. The idea of a costless commitment – "cheap talk" – is belied by the limited membership of the CISG and the time to its ratification. As of 2015, 35 years after its establishment, only 83 countries have joined the convention. Some of these countries took a long time before ratifying. Japan, for example, waited 28 years before ratifying the CISG, and Brazil's ratification came after 33 years! A costless agreement should have enjoyed membership that is near-universal and immediate (Simmons 2009, 60), but this is clearly not the case with the CISG.

What fuels the hesitations – or even outright resistance – toward harmonization efforts? A possible hindrance is the opportunity costs of treaty ratification. As Kelley and Pevehouse (2015) explain, treaties compete for space on the agenda of the executive and the legislature: time spent on ratifying treaties means less time for producing domestic legislation. When the legislature is busy passing legislation, it will have less time for treaties, and ratification will take longer. The case of Japan demonstrates this dynamic. In 1989, soon after the CISG had enough members and came into force, the Japanese Ministry of Justice organized a study group to examine the

[4] Article 6 of the CISG.
[5] Articles 92–96 of the CISG. See Gillette and Scott (2005), 471, 476–477.
[6] See, for example, Articles 37–39 of the CISG; Van Alstine (1998); Stephan (1999).

convention and was expected to initiate the process of ratification. Yet with the onset of Japan's economic crisis in the early 1990s, the legislative agenda filled with urgent laws aimed at achieving economic recovery, such as laws on insolvency and secured transactions. The Ministry of Justice thus suspended its work on the CISG (Sono 2008).

Yet the most significant obstacle to harmonization initiatives is the costs of legal adjustment, borne by legal practitioners: lawyers and judges (Simmons 2009, 72–73). In the case of PTAs, these costs are modest. Joining a PTA will not typically trigger fundamental legal changes, nor will it substantially alter the everyday work of most commercial lawyers. Trade-barrier removal is not an issue that lawyers in private practice are usually concerned with or have a stake in. Harmonization of private law, by contrast, could have far-reaching consequences for the practice of law. Commercial law is the "bread and butter" of business lawyering, and harmonization initiatives that change that law would meet resistance from lawyers who prefer the familiar, since they "have sunk costs in that pre-existing stock of knowledge" (Nottage 2005, 829). The status quo is convenient for lawyers who have been practicing for years using the same contract templates. The introduction of new rules will require them to change their practice, incur learning costs, and face uncertainty about the new rules' implications. Importantly, new rules would diminish the predictability of the outcome of transactions, which lawyers greatly value (Nomi 2006; Sono 2008, 107; Dholakia 2006). The uncertainty inherent in any new rule is compounded by the use of broad language in harmonization instruments, as discussed above. Also contributing to the uncertainty is the fact that these instruments are not administered by an international court that can foster uniform interpretation and application (Kilian 2001, 242–243). Consider the reception of the CISG in the United States, as described by McMahon (1996): "[T]he common wisdom among traders and their [legal] advisors has been that the C.I.S.G. is so new and so different from the U.C.C. [Uniform Commercial Code] and the ramifications of its provisions are so uncertain that it is sound practice to exercise the option to exclude it" and return to the familiar territory of domestic law.

Judges share many of the lawyers' suspicions and concerns about legal harmonization. Similar to lawyers, judges have an "inertia of habit" or "status-quo bias," formed by their legal education and expertise, which makes it difficult for them to accept and adapt to a new kind of legal thinking (Frisch 1999; Nottage 2005, 831–834). Judges are hesitant to apply unfamiliar rules that diverge significantly from the well-known rules they have applied for years, and are often reluctant to bear the costs of learning the new rules. The difficulty of adjustment is reflected in the unease of U.S. courts with the CISG, which differs from the common law and the UCC that these courts ordinarily apply: "We are struck by a new world where there is no consideration, no statute of frauds, and no parol evidence rule, among other differences" – differences that go to the heart of contract law (Murray 1988, 11–12; Kilian 2001; Nottage 2005, 836).

In addition to legal practitioners, resistance to harmonization may come from government lawyers who bear the costs of integrating the harmonization instrument into the legal system and ensuring consistency with existing legislation. This may turn out to be a demanding and burdensome task, and indeed it was another reason for Japan's hesitations concerning the CISG. Integrating the CISG into the Japanese legal system required changes to the Civil Code – changes that were expected to be difficult, as some of the Code's rules are deeply rooted in Japan's traditional merchant law (Nomi 2006; Sono 2008, 108).

There are also ideational costs of adjustment to harmonized rules. They stem from the special status that private law enjoys as part of the history and tradition of a nation. The view of law as an expression of the national spirit was born in 19th century Germany and soon gained traction in other countries engaged in nation-building. The establishment of national civil codes was seen as an expression of, and a symbol for, the national unity of a people. To this day, the conception of private law as an embodiment of national values and traditions results in an attachment to one's national law and fuels resistance to harmonization efforts: harmonized law is seen as alien or inferior to local legal norms and as a threat to the diversity of values embodied in national laws (Comparato 2012; Smits 2012). Such attitudes mark an important distinction between private-law harmonization and PTAs: the public law of trade, which may undergo change pursuant to a PTA, does not raise similar sentiments.

In summary, both PTAs and legal harmonization involve costs, although of a different nature. By removing trade barriers and changing trade flows, PTAs might harm certain firms and industries. Legal harmonization, by contrast, has economic effects that are more ambiguous and difficult to foresee; ex-ante, it does not directly threaten the economic interests of any actor. The costs of harmonization that are clearly visible in advance are those of legal adjustment: the reluctance of legal practitioners to replace well-familiar legal rules with new ones. While it is difficult to compare economic costs and legal obstacles, it is plausible that the latter are more easily surmountable. Nottage (2005), for example, suggests several strategies for "overcoming psychological barriers to CISG." Mitigating the adverse economic effects of PTAs is more challenging (Harrison et al. 2003). Overall, then, we would expect legal-harmonization agreements to meet less domestic resistance and to win ratification more easily.

3.3 Choosing between PTAs and legal harmonization

PTAs and legal harmonization are different means to the same end: facilitating and boosting international trade. Employing both means can be burdensome, as both entail the costs associated with entering international agreements: costs of negotiation as well as the subsequent costs of ratification, implementation, and adjustment (Perkins and Neumayer 2007; Haftel and Thompson 2013). Rational governments would thus choose between the two alternatives on the basis of their relative merits. At first sight, it seems that governments would find legal harmonization appealing because of its easier domestic acceptance. Concerned for their political survival, and mindful of veto players with the ability to undermine or block international agreements, governments may favor legal harmonization as the path of least resistance. A harmonization agreement can be expected to win ratification with greater ease than PTAs and will require the government to expend limited political capital. Furthermore, a harmonization instrument with a global application aligns the domestic laws of a large number of countries. By contrast, each PTA reduces trade barriers among a few select countries.

Nevertheless, I argue that governments will typically prefer trade liberalization through PTAs to legal harmonization. The rationale is the one offered by Mansfield and Milner (2012): governments enter trade-promoting initiatives in large part because they offer domestic political benefits. In that respect, PTAs surpass legal harmonization. PTAs allow the government to obtain the support of groups that benefit from trade-

barrier reduction, such as exporting industries, and to reassure the public that the government is committed to a lower level of protectionism. As such, PTAs promise to deliver governments their most coveted prize: stronger domestic political support, better prospects of reelection, and longer time in office (Hollyer and Rosendorff 2012). Legal harmonization, by contrast, does not yield the same domestic political dividends. The public, as well as interest groups, might fail to identify significant gains from legal-harmonization arrangements and will not reward the government for entering them. Without the promise of domestic political benefits, the government may lack a compelling motivation to pursue legal harmonization. The relative ease of obtaining domestic acceptance of harmonization may not be a strong enough incentive, if the government cannot expect to reap clear political gains.

Governments are thus likely to treat legal harmonization and PTAs as policy substitutes.[7] They are more likely to turn to the second-best strategy – legal harmonization – when the preferred policy mechanism – PTAs – proves unsatisfactory or insufficiently available. In some cases, a country's PTA program may still be at its infancy: the efforts to enhance trade through PTAs have not yet begun or have just begun. Legal harmonization then offers a temporary substitute that can boost trade before the country's PTA ties are fully developed. In other cases, governments may find it difficult to join PTAs for domestic political reasons: veto players might block such a move, or a certain PTA might be unpopular with the public. The obstacle to entering PTAs may also be at the international level. For example, poor political relations with its neighbors or geographic isolation could make the country a less attractive trade partner; and even if trade negotiations are held, they might be long and difficult to complete, or may result in an agreement that liberalizes trade only modestly (Hegre et al. 2010; Mansfield and Milner 2012: 56, 101–102). If a government finds it difficult to facilitate trade through PTAs, it will resort to the alternative policy: legal harmonization. Harmonization should help the government to make up for the insufficiency of the PTA strategy. The more limited the PTA partnerships, the stronger the incentive to compensate for this deficiency through international legal harmonization. By contrast, an extensive PTA network would make legal harmonization unnecessary. A government has little incentive to make the harmonization commitment and bear its costs, if it already has at its disposal another means of boosting trade. This brings us to this study's primary hypothesis:

Hypothesis The more limited are its PTA partnerships, the more likely is a government to join legal-harmonization efforts.

4 Research design

4.1 Method

This study seeks to uncover the relationship between PTAs and legal harmonization; specifically, whether a country's participation in harmonization efforts is affected by its PTA ties. To that end, I focus on the Convention on the International Sale of Goods:

[7] On substitutes in trade policy see, for example, Pelc (2011).

one of the primary international agreements aimed at establishing a harmonized legal foundation for international commercial transactions. The goal is to find whether a country's ratification of the convention is influenced by its PTA membership. Cursory evidence supports the argument that states with few PTA partners are more likely to ratify. Notably, the major powers that have joined the convention typically did so early on, before their PTA network was fully developed. The United States, for example, ratified the CISG in 1986, a year after concluding its first trade agreement with Israel. China also joined the CISG in 1986, long before pursuing PTAs.

To test the PTA-CISG association more systematically, I employ event-history modeling that estimates the "risk" that an event of interest – the ratification of the convention – will occur as time elapses. The primary model used is the Cox model, which has been widely applied in the study of treaty ratification (Neumayer 2009; Simmons and Danner 2010; Haftel and Thompson 2013; Marcoux and Urpelainen 2014). The results of the Cox model are reported as hazard ratios that express the proportionate impact of a given variable on the decision to ratify the convention. Values higher than 1 increase and values lower than 1 reduce the likelihood of a ratification in any given year for which ratification has not already occurred. Once a country ratifies the convention, it exits the analysis. The unit of analysis is country-year, and the temporal coverage is 1980 (the year of the convention's establishment) through 2012.

In addition to the Cox model, I employ two other event-history models to increase the robustness of the results: a Weibull regression and discrete event-history analysis. The latter uses a logistic regression combined with a cubic polynomial to adjust for time dependencies. It is particularly appropriate when data are collected in large increments of time, such as years, as is the case with much of IR analysis, including the current study (Box-Steffensmeier and Jones 2004; see Kaczmarek and Newman 2011).

4.2 Variables

The dependent variable is membership in the CISG. Ratification data are from UNCITRAL, which oversees the convention.[8]

The key independent variable is a country's PTA ties. The data come from DESTA: Design of Trade Agreements Database. This dataset is more comprehensive than comparable datasets: it encompasses 733 PTAs signed since 1945 that include concrete steps toward preferential liberalization of trade in goods and/or services (Dür et al. 2014). Based on this dataset, PTA membership was operationalized in four different ways. One measure is *PTA agreements*: the number of preferential trade agreements in which country i is a member in year t. This is a rather crude measure: a bilateral PTA and a PTA with 10 members are treated the same, although the latter liberalizes trade with many more countries than the former. The second measure – *PTA partners* – is more refined: it indicates the total number of countries with which country i shares a PTA in year t.

International agreements – and PTAs among them – vary significantly in the depth of cooperation that they establish (Bernauer et al. 2013). In DESTA, the measure of PTA depth combines seven key provisions that may be included in PTAs, such as a

[8] http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html

goal of zero tariffs, liberalization of the trade in services, and commitments in the area of competition or intellectual property. This nuanced measure brings us closer to capturing the economic and political significance of PTAs, compared to a mere count of agreements or partners. *Sum PTA depth* is the sum of the depth of all PTAs in which country *i* is a member in year *t*. In addition, I use *Sum PTA weighted depth* – a measure that weighs the depth of each PTA by the number of members in the agreement.

I expect all four measures of PTA membership to be negatively associated with CISG ratification: deeper PTAs are expected to provide a greater boost for trade (Orefice and Rocha 2014), which reduces the need for other trade-enhancing mechanisms, such as legal harmonization. By contrast, shallow PTAs offer more limited trade gains, for which legal harmonization can make up. The same applies to the number of partners or agreements. Countries with a small number of PTA partners or agreements have a stronger motivation to promote trade through legal harmonization. By contrast, countries enmeshed in a thick web of PTA ties have less need for legal harmonization and a weaker incentive to bear its costs.

4.3 Controls

Beyond PTA membership, the model includes additional influences on countries' willingness to join the CISG. In identifying the appropriate controls I rely on studies of PTA formation, analyses of the CISG, as well as the broader literature on international treaties.

Gross domestic product (GDP) per capita[9] may be associated with the likelihood of ratification. On the one hand, developing countries should be more likely to ratify: by adopting the uniform law of the CISG, they can modernize their legal framework for business, which is often outdated and inefficient (Faria 2009). On the other hand, while the CISG aims to foster trade "on the basis of equality and mutual benefit,"[10] developing countries have argued that its terms might favor exporters in rich countries. Such a view could reduce developing countries' willingness to ratify (Schwenzer and Hachem 2009, 474). Another possible influence is a country's dependence on trade, which has been shown to affect PTA formation: When overseas commerce is important for the country's economy, there is a stronger incentive to enter PTAs in order to solidify or enhance the gains from trade (Mansfield and Milner 2012:129–131). Two variables capture trade exposure: *Export/GDP* is the value of all exported goods and services as a percentage of country *i*'s GDP; *Import/GDP* is the value of imports as a percentage of GDP.[11]

A country's ability and willingness to enter international agreements is highly influenced by domestic political characteristics and considerations. Mansfield and Milner (2012) highlight two domestic influences on PTA formation. First, democracies have a stronger incentive to enter PTAs. Such agreements allow democratic leaders to reassure the public that special interests do not dictate trade policy; this, in turn, improves leaders' prospects of remaining in office. Second, the likelihood of entering

[9] Source: World Bank's World Development Indicators; values are in constant 2005 USD.
[10] Preamble of the CISG.
[11] Source: World Bank's World Development Indicators.

a PTA decreases with the number of veto players who can block policy change. This dual logic applies to legal-harmonization agreements as well. Democratic governments may wish to enter such agreements to signal their commitment to enhancing trade, but veto players might hinder ratification. I therefore control for the level of democracy[12] and the presence of players who can veto policy decisions.[13]

Several studies have shown that common-law countries are less likely to join international agreements or courts. Common-law countries may therefore be hesitant to join legal-harmonization instruments (Simmons 2009; Simmons and Danner 2010; Mitchell and Powell 2011). Specific concerns arise with respect to the CISG. English lawyers have resisted the ratification of the CISG, which they consider to be inferior to English law. Although the drafters of the convention sought a text that would bridge the civil law-common law divide, English lawyers have maintained that the CISG significantly departs from the common law, includes vague provisions, and creates traps for the unsuspecting English business (Forte 1997; Kilian 2001; Nottage 2005, 832–836; Hofmann 2010). Common law should thus be associated with a lower likelihood of ratification.[14]

Countries' decisions on whether or not to join international agreements are not made in isolation. Rather, they "are most probably influenced by what other countries do in the respective policy area" (Bernauer et al. 2010, 518). Ratification of human rights treaties is influenced by the density of regional ratification (Neumayer 2008; Simmons 2009, 90–96), and a regional effect on ratification has also been demonstrated in environmental treaties (Bernauer et al. 2010). The impact of regional ratification should be particularly strong with respect to the harmonization of commercial law. Since much of a country's foreign trade is with neighboring countries (Disdier and Head 2008), there is an incentive to ensure legal compatibility with one's neighbors. If legal systems in the region have already embraced the uniform law, a country should be motivated to make a similar adjustment to its own legal system in order to maintain market access. I therefore control for the rate of CISG ratification in a country's geographic region.[15]

Another possible influence on the ratification of the CISG is the country's WTO membership. Given the central role of the GATT/WTO in the world trading system, I control for the possible influence of WTO membership on the ratification of the CISG.[16] Finally, countries that are generally favorable toward international agreements and institutions may be more likely to ratify the CISG. The KOF index of political globalization captures countries' inclination for cooperation through indicators such as membership in international organizations and treaties.

Detailed variable description and descriptive statistics are in the online appendix.

[12] Source: Polity IV.
[13] Source: Henisz's Political Constraint Index.
[14] Source: La Porta et al. (2008).
[15] The percentage of countries in one's region that have ratified the CISG, lagged one year.
[16] Source: WTO website.

5 Results

Table 1 presents the influences on the ratification of the CISG, as captured through a series of event-history models.

Table 1 Influences on the ratification of the CISG

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Sum PTA depth	0.984**				0.982**	−0.016**
	(0.007)				(0.007)	(0.008)
Sum PTA weighted depth		0.999**				
		(0.000)				
PTA partners			0.99**			
			(0.004)			
PTA agreements				0.958**		
				(0.016)		
GDP per capita	1.477***	1.484***	1.414**	1.456**	1.715***	0.447***
	(0.22)	(0.221)	(0.207)	(0.211)	(0.23)	(0.151)
Export/GDP	0.973**	0.973**	0.974**	0.975**	0.97***	−0.029**
	(0.011)	(0.011)	(0.011)	(0.011)	(0.011)	(0.012)
Import/GDP	1.032***	1.032***	1.031***	1.03***	1.031***	0.031***
	(0.011)	(0.011)	(0.012)	(0.011)	(0.011)	(0.011)
Democracy	1.043	1.043	1.044	1.045	1.04	0.041
	(0.034)	(0.034)	(0.034)	(0.034)	(0.032)	(0.032)
Veto players	0.382	0.348	0.392	0.391	0.557	−0.822
	(0.354)	(0.323)	(0.369)	(0.369)	(0.507)	(0.933)
Common law	0.457**	0.499**	0.432**	0.396***	0.421**	−0.845**
	(0.159)	(0.174)	(0.15)	(0.139)	(0.145)	(0.354)
Regional ratification	1.037***	1.035***	1.029***	1.035***	1.028***	0.037***
	(0.007)	(0.007)	(0.007)	(0.007)	(0.007)	(0.008)
GATT/WTO membership	1.138	1.138	1.187	1.107	0.933	0.179
	(0.453)	(0.455)	(0.47)	(0.44)	(0.354)	(0.401)
Political globalization	1.02**	1.018**	1.02**	1.022**	1.011	0.016*
	(0.009)	(0.009)	(0.009)	(0.009)	(0.008)	(0.009)
P					0.939	
Number of countries	147	147	147	147	147	
Number of ratifications	64	64	64	64	64	
Observations	3046	3046	3046	3046	3046	3046
Prob>chi^2	0.00	0.00	0.00	0.00	0.00	0.00

Models 1–4 are Cox proportional hazards models; Model 5 is a Weibull model; Model 6 is a discrete-time model with a cubic polynomial. The table reports hazard ratios for models 1–5

Standard errors in parentheses

* $p<0.1$; ** $p<0.05$; *** $p<0.01$

Model 1 is a Cox model that employs the primary measure of PTA participation – *Sum PTA depth*, that is, the sum of the depth of all PTAs of which country *i* is a member in year *t*. Consistent with this study's hypothesis, this variable is negatively associated with CISG ratification: a one-unit increase reduces the likelihood of ratification by 1.6 %. This means that an increase of one standard-deviation in the overall depth reduces the chances of ratification by 34 %. Conversely, as the total PTA depth diminishes, the likelihood of CISG ratification rises: governments that have achieved limited trade liberalization wish to make up for this deficiency through an instrument of legal harmonization.

This finding holds when employing alternative measures of PTAs. The sum of PTA depth, weighted by the number of partners in each PTA, is also negatively associated with the likelihood of CISG ratification (Model 2). A higher number of PTA partners or agreements similarly reduces the likelihood of CISG ratification (Models 3 and 4, respectively). An increase of one standard-deviation in the number of partners reduces the chances of ratification by 29 %.

Models 5 and 6 test the robustness of the model to alternative methods of estimation. In Model 5's Weibull regression, the sum of PTA depth is negatively associated with ratification, similar to Model 1. Model 6 is a discrete event-history model (logit regression with a cubic polynomial). Once again, overall PTA depth is negatively correlated with CISG ratification. This provides added support for the hypothesized relationship between PTAs and legal harmonization.

The control variables are generally consistent with the expectations. Trade dependence is an important influence on ratification: Heavy reliance on imports is an incentive to pursue legal harmonization as a means to encourage exports; by contrast, a greater share of exports in GDP reduces the incentive to promote trade through harmonization. Democracy is positively associated with the likelihood of CISG ratification, as expected, but is not statistically significant. The reason is, perhaps, that entering the CISG is unlikely to significantly increase the government's political support. As such, it holds limited appeal for democratic governments. Veto players exert a negative influence on ratification, as anticipated, but this variable is also not statistically significant – indicating that the primary obstacle to ratification may not be the resistance of organized interests that are directly and tangibly harmed, but the reluctance to adjust to new legal rules. As expected, common law countries are considerably less likely to join the CISG. While GATT/WTO membership appears to be unrelated to CISG ratification, ratification is strongly influenced by the behavior of countries in the region. Ratification by one's neighbors creates a strong incentive to follow suit in order to maintain legal compatibility and avoid unnecessary legal hurdles to trade. Political globalization also exerts a positive influence on ratification: countries that generally tend to participate in international agreements and institutions are more likely to ratify the CISG. Finally, legal harmonization offers a way for developing countries to modernize their legal framework; but the positively signed GDP per capita reveals that it is richer countries that tend to take advantage of this opportunity. Perhaps this is a sign of developing countries' mistrust in international trade initiatives (Wade 2003).

The online appendix reports a set of robustness tests. These included the introduction of additional controls. First, it has been suggested that nationalist sentiments might lead states to cling to their national laws and reject internationally-established uniform laws (Comparato 2012; Smits 2012). However, a variable indicating a nationalist

executive was not statistically significant.[17] Second, it is possible that countries with a weak legal system would be particularly interested in the CISG: the convention offers them a way to improve their legal system and create a trade-friendly legal environment. However, two indicators of the quality of the legal system – judicial independence[18] and law and order[19] – seem to be unrelated to CISG ratification. Third, left-wing governments are more likely to enter PTAs (Mansfield and Milner 2012:128–129), but they are not more likely to ratify the CISG.[20] Importantly, the addition of these controls did not change the key finding: PTA membership is negatively and significantly associated with the likelihood of CISG ratification. Further tests show that this finding holds when including region fixed-effects and when lagging the PTA variable.

6 Generalizing the argument

The CISG is one of the primary agreements on international legal harmonization, but it is not the only one. Does the logic of public law-private law substitution apply to other harmonization instruments as well? In this section I examine two such instruments established by UNCITRAL: model laws on electronic commerce and cross-border insolvency. A model law is essentially a template for legislation: a legislative text that states may implement in their legal system, that is, enact as part of the national law. As such, a model law is more flexible than a treaty and allows states to achieve the goal of harmonization while accommodating local needs and circumstances. The 1996 Model Law on Electronic Commerce aims at increasing legal predictability and removing legal obstacles for commerce conducted through electronic means. Specifically, it sets out the specific requirements that electronic communications need to meet in order to fulfill the same functions and purposes that certain notions in the traditional paper-based system – such as "writing" and "record" – seek to achieve. The 1997 Model Law on Cross-Border Insolvency is designed to harmonize and modernize the laws for cross-border proceedings concerning debtors experiencing severe financial distress or insolvency. Its main features include access to local courts for representatives of foreign insolvency proceedings and for creditors; recognition of foreign insolvency proceedings; relief to assist foreign proceedings; as well as cooperation with foreign courts or foreign insolvency representatives (UNCITRAL 1999 and 2014).

Table 2 presents an event-history analysis of the implementation of the two model laws, that is, an estimation of the "risk" of the enactment of legislation based on each of the model laws.

According to Model 7, the sum of PTA depth is negatively associated with the implementation of the model law on e-commerce[21]: as depth increases by one point, the likelihood of implementation drops by nearly 2 %.[22] This is consistent with the impact of this variable on the ratification of the CISG. In both cases, greater trade liberalization

[17] Source: Database of Political Institutions.
[18] Source: Cingranelli-Richards human rights dataset.
[19] Source: International Country Risk Guide.
[20] Source: Database of Political Institutions.
[21] Note that an increasing number of PTAs cover e-commerce. Mattoo and Sauvé (2011), 259.
[22] The model controls for the number of internet users per 100 people. Source: World Bank's World Development Indicators.

Table 2 Influences on the implementation of the model laws on e-commerce and cross-border insolvency

	Model 7 E–commerce	Model 8 Insolvency
Sum PTA depth	0.981**	–
	(0.008)	
Total BITs	–	0.971**
		(0.011)
GDP per capita	1.658***	1.361
	(0.295)	(0.323)
Export/GDP	1.001	–
	(0.006)	
Import/GDP	1	–
	(0.008)	
FDI inflows/GDP	–	0.946*
		(0.031)
Democracy	1.038	1.234
	(0.037)	(0.166)
Veto players	0.083**	0.383
	(0.091)	(0.763)
Common law	2.874***	1.71
	(0.998)	(0.998)
Regional implementation	1.041***	1.036
	(0.013)	(0.075)
GATT/WTO membership	1.255	–
	(0.723)	
Internet users	0.983	–
	(0.014)	
Financial center	–	4.346**
		(2.892)
Political globalization	1.027**	1.022
	(0.012)	(0.024)
Number of countries	151	151
Number of implementations	43	16
Observations	1913	2079
Prob>chi^2	0.00	0.00

Cox proportional hazards models; the table reports hazard ratios
Standard errors in parentheses
* $p<0.1$; ** $p<0.05$; *** $p<0.01$

through PTAs reduces the incentive to harmonize the private law of trade – be it the law that governs sales of goods or the law of electronic commerce.

A modern insolvency law that supports the efficient resolution of financial distress is of great importance to foreign investors. The implementation of the model law on cross-border insolvency can therefore serve to lure foreign direct investment (FDI) (Moskvan and Vrbova 2013). However, governments may also attract FDI through an instrument of public law: the bilateral investment treaty. BITs grant extensive rights and protections to investors, first and foremost a right of international arbitration in the

event of a dispute between the investor and the host country (Elkins et al. 2006). Model 8 shows that, consistent with this study's argument, there exists a negative association between the public law and private-law instruments of attracting FDI: the higher the number of BITs that a country has signed, the less likely it is to implement the model law on cross-border insolvency.[23] Conversely, countries that have not managed to enter enough BITs seek to appeal to foreign investors by enacting the insolvency law.

7 Conclusion

The multilateral trade regime and preferential trade agreements are two key instruments through which governments seek to boost trade. As this article has shown, however, they are not the only instruments that governments employ to facilitate commercial exchange. These public-law measures are part of a broader array of tools that also includes arrangements aimed at harmonizing private law, that is, replacing the existing cross-national diversity of commercial law with a single, unifying legal regime. Harmonization of the legal rules governing cross-border transactions increases clarity and certainty, reduces transaction costs and lowers the likelihood of disputes – all of which should facilitate economic activity. By focusing only on the public-law side – GATT/WTO and PTAs – and overlooking the private-law dimension, the trade literature has missed a part of the picture. In order to fully understand international trade cooperation, we must examine the entire picture – including the private-law side.

This article has begun to fill this gap by looking at PTAs and private-law instruments as different means to the same end. I have demonstrated that governments regard these tools as substitutes: they take the legal-harmonization path when the PTA route is insufficient. This finding, I hope, will inspire a broader research agenda that will further examine the different components of the trade-boosting toolkit. In addition to the mutual relations between public-law and private-law tools, one may study how states choose from the menu of private-law options; for example, when do states harmonize law through a legally binding treaty and when do they establish standard rules through a nonbinding instrument, such as a model law. The design of harmonization instruments is another topic for exploration, as are their economic and other effects. While the design and effects of PTAs have been the subject of much study and debate, harmonization instruments are yet to receive such scholarly treatment.

This article calls for a broader agenda in the study of trade, and it makes a similar call to IR scholars of international law. The latter have studied how public international law governs the relations between states or between states and nonstate actors. Yet in the age of globalization, international law also plays an important role in regulating cross-border commercial exchange between private parties. To gain a comprehensive understanding of the role of law in international affairs, we ought to broaden our lens to include private law. Similar to public law, the international regulation of private-law issues entails complex political dimensions and offers a promising and important area for research.

[23] Data on the number of BITs that a country has signed are from UNCTAD's database of international investment agreements. The model also controls for a country's status as a major financial center (defined as membership in the Basel Committee on Banking Supervision) and for the ratio of FDI inflows to GDP (source: World Bank's World Development Indicators).

This article speaks to two additional bodies of literature. The first deals with international regime complexity – the presence of partially overlapping and parallel international regimes – and with the forum shopping that such a complexity allows (Alter and Meunier 2009). Several studies have systematically examined how states select the international venue that best suits their interests (Allee and Huth 2006; Davis 2012), and the current study provides additional evidence on how states choose among different types of agreements that serve similar goals. Second, this article ties into the emerging literature on global private politics, which examines the private rules governing transnational activity (Büthe and Mattli 2011; Grabosky 2013). This literature largely highlights regulation issued by private firms and organizations. Some have argued, however, that private governance often involves the state and that we should develop a better understanding of the public-private interaction (Whytock 2010). This article contributes to such an understanding, as it focuses on *state law* that governs private activity and on the tradeoff between private and public law. The study of global governance requires further analysis of such interactions in a way that moves beyond the traditional distinction between the private and public spheres.

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