

**Ministry of Higher Education and Scientific Research**  
**Al -Alamain Institute for Graduate Studies**  
**Private Law Department**



**Impact of Globalization on The Conflict of Laws**  
**(A Comparative and Analytical Study)**

A Thesis

submitted to the Council of Al -Alamain Institute for Graduate Studies in  
Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy  
in Private Law

By

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## **Supervisor's Declaration**

I hereby certify that the preparation of the thesis by the candidate student

**Ahmed Abbas Ali**, titled "**Impact of Globalization on The Conflict of Laws (A Comparative and Analytical Study)**," was conducted under my supervision at the Al-Alamein Institute for Higher Education – Department of Private Law. This thesis is submitted in partial fulfillment of the requirements for a Doctorate degree, and I hereby recommend it for formal academic defence.

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## Table of Content

<a href="#"><u>Supervisor’s Declaration</u></a> .....	2
<a href="#"><u>Proofreader’s Declaration</u></a> .....	3
<a href="#"><u>Decision of Viva Committee</u></a> .....	4
<a href="#"><u>ACKNOWLEDGMENT</u></a> .....	5
<a href="#"><u>List of Abbreviations</u></a> .....	11
<a href="#"><u>ABSTRACT</u></a> .....	14
<a href="#"><u>Chapter 1 : Introduction</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.1 Thesis Conceptual Analysis</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.1.1 Thesis Statement</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.1.2 Research Questions</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2 Significance of the Study</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.1 Contribution to the Knowledge Perspective</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.1.1 Theoretical Framework:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.1.2 Research Gaps</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.1.3 Case Law and Doctrinal Shifts:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.2 Practical Perspective:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.2.1 Cross Border Dispute Resolution:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.2.2 Recommendations for Policy Makers:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.2.3 Technological Impact:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.2.2.4 Capacity Building:</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.3 Literature Review</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.4 Research Methodology and Strategy</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#"><u>1.5 Thesis Outline</u></a> .....	خطأ! الإشارة المرجعية غير معرّفة.

## **Chapter 2 : Theoretical Framework of Globalization and the Conflict of**

<b><u>Laws</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.1 Introduction</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2 The Rules of the Conflict of Laws and their Traditional Principles.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.1 Ontology and Scope of the Conflict of Laws</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.1.1 Scope of the Conflict of Laws:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.1.2 Sources of the Conflict of Laws:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.2 Existing Theories and Schools of Thought</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.2.1 Statute Theory:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.2.2 Natural Seat of the Obligation Theory:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.2.2.3 Territorial Theory (Acquired Rights):</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3 The Concept of Globalization and the Challenges It Poses.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3.1 Definition of Globalization and Historical Background.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3.2 Definition of Globalization:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3.2.1 Historical Background of Globalization</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3.2.2 Characteristics of Globalization:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.3.3 Challenges to the Current System</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.4 Definition of Sovereignty and its Importance to the Conflict of</u></b>	
<b><u>Laws.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.4.1 The Concept of Sovereignty</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.4.2 Sovereignty in the Context of the Conflict of Laws.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>2.5 Conclusion</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>Chapter 3 : The Dialectic between Globalization Sovereignty and Legal</u></b>	
<b><u>Certainty</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.1 Introduction</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.2 Impact of Globalization on State Sovereignty.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.2.1 Key Features of Traditional Sovereignty.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.2.2 Adaptation of Sovereignty in Light of Globalization.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.3 Impact of Globalization on The Concept of Law and Legal Systems.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.3.1 The Theory of Law and Law-Making</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.3.1.1 Concept of Law and Law-Making:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.3.1.2 Non-State Legal Actors in the Sphere of Conflict of Laws.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.3.2 Impact of Globalization on National Legal Systems.</u></b>	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>3.4 Impact of Globalization on Legal Certainty.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.

[3.4.1 The Essence of the Principle of Legal Certainty.](#) خطأ! الإشارة المرجعية غير معرّفة.

[3.4.2 Balancing Legal Certainty in Light of Globalization.](#) خطأ! الإشارة المرجعية غير معرّفة.

[3.5 Conclusion](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[Chapter 4 : International Trade and the Principle of Party Autonomy in the Era of Globalization.](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.1 Introduction](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2 The Evolution of International Trade.](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.1 Early Development of International Trade.](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.1.1 Evolution of Customary Norms](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.1.2 The Foundational Conceptions of International Trade.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.2 Role of Customary Commercial Norms in Cross-Border Transactions](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.2.1 What is a Customary Commercial Norm](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.2.2.2 Conceptual Perspectives on Customary Commercial Norms in International Trade](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.3 The Role of the Principle of Autonomy in Facilitating International Trade.](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.3.1 The Concept of Party Autonomy in the Context of Conflict of Laws.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.3.2 The Extent of Influence of Party Autonomy on International Trade.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.3.2.1 Inclusion of Party Autonomy in Normative Frameworks.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.3.2.2 Party autonomy facilitating international trade.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.4 Globalization and Its Contribution to the Expansion of International Trade.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.4.1 The Growth of International Trade in the Globalized Economy.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.4.2 Risks and Challenges of Cross-Border Disputes in Globalized Context.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5 Privatization of Norm-Making in International Trade.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.1 The Essential Features of Private Governance Norms.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2 Non-State Regulatory Frameworks in International Commerce.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2.1 Lex Mercatoria and International Commercial Principles.](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2.2 Codification of Trade Usages](#)..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2.3 Standardized Contracts](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2.4 Technical Standards](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.5.2.5 Platforms and Infrastructure Governance](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

[4.6 Conclusion](#) ..... خطأ! الإشارة المرجعية غير معرّفة.

## **Chapter 5 : Globalization and the Adoption of International Subjective**

<b><u>Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.1 Introduction</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2 The Adoption of International Subjective Rules in the Sphere of</u></b>	
<b><u>Conflict of Laws.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.1 The Concept of Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.1.1 Subjective Rules as Conflict of Laws Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.1.2 Subjective Substantive Rules:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.1.3 Subjective Rules as Governing Law</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.2 Possibility of Adoption of Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.2.1 The Essence of Adopting of Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.2.2.2 Requirements for the Adoption of International Subjective</u></b>	
<b><u>Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3 Impact of Globalization in Reducing the Conflict of Laws Through</u></b>	
<b><u>Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3.1 Enforcement of the Idea of International Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3.2 Limitations of International Subjective Rules.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3.2.1 Mandatory Rules:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3.2.2 Public Policy:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.3.2.3 Weaker-Party Protections:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4 Enhancement of Cooperation and Integration Between States in the</u></b>	
<b><u>Face of Globalization.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1 Initial Efforts of Cooperation and Integration Between States.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1.1 Comity</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1.2 The Hague Conference:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1.3 Post War Treaty Structures:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1.4 Regional Integration (the European Union).</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.1.5 International Subjective Rules:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.2 Aspects of Cooperation and Integration.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.2.1 Harmonization of Jurisdiction</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.2.2 Harmonization of Applicable Law:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.2.3 Recognition and Enforcement of Judgements:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.4.2.4 Digital Cooperation:</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.
<b><u>5.5 International and Regional Agreements and Initiatives.</u></b> .....	خطأ! الإشارة المرجعية غير معرّفة.

<a href="#">5.5.1 International and Regional Agreements to Face Challenges Posed by Globalization.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.1.1 The Hague Conference on Private International Law (HCCH).</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.1.2 The UNCITRAL Model Laws and Convention for International Commerce.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.1.3 The UNIDRIOT Principles:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.1.4 Regional Integration:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.1.5 Regional Cooperation beyond the EU:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.5.2 The Role of States in Globalized and Regionalized Legal World..</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">5.6 Conclusion .....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">Chapter 6 : Thesis Findings and Recommendations .....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.1 Introduction.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2 Summary of Results.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.1 Recalibrated and Reshaped Sovereignty:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.2 Challenges Posed to States:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.3 Reshaped Legal Certainty:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.4 Enhanced International Trade and Party Autonomy:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.5 International and Regional Integration and Cooperation:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.6 Adoption of International Subjective Rules:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.2.7 The Conflict of Laws in Iraq:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3 Recommendations to Legislators and Courts.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3.1 Recommendation for Legislators:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3.1.1 Recalibrating Sovereignty:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3.1.2 Recognition of Non-State Norms:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3.1.3 Reform of Traditional Connecting Factors:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">٦,٣,١,٤ Strengthen Regional and International Cooperation:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">٦,٣,١,٥ Setting Clearer Public Policy Provisions:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">٦,٣,١,٦ Enhanced Iraq Legislative Strategy:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.3.2 Recommendation for Courts:.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">6.4 Proposals for Additional Research and Review.....</a>	خطأ! الإشارة المرجعية غير معرّفة.
<a href="#">Bibliography .....</a>	خطأ! الإشارة المرجعية غير معرّفة.

## **List of Abbreviations**

<b>Abbreviation</b>	<b>Full Form</b>
A.D.	Anno Domini
A.H.	Anno Hegirae
AI	Artificial Intelligence
ANT	Actant-Network Theory
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
CIDIPs	Inter-American Specialized Conferences on Private International Law
CISG	United Nations Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
CNIL	Commission Nationale de l'Informatique et des Libertés
CoL	Conflict of Laws
DAOs	Decentralized Autonomous Organizations
EC	European Community
ECJ	European Court of Justice
ECLI	European Case Law Identifier
ECT	Energy Charter Treaty
EDPB	European Data Protection Board

EJN	European Judicial Network
EU	European Union
EWCA	Court of Appeal of England and Wales
EWHC	High Court of Justice of England and Wales
FIDIC	International Federation of Consulting Engineers
FOSFA	Federation of Oils, Seeds and Fats Associations
GAFTA	Grain and Feed Trade Association
GATT	General Agreement on Tariffs and Trade
GDPR	General Data Protection Regulation
GEDIP	European Group for Private International Law
HCCH	Hague Conference on Private International Law
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ILM	International Legal Materials
ILR	International Law Reports
IMF	International Monetary Fund
ISDA	International Swaps and Derivatives Association
ISDS	Investor-State Dispute Settlement
ITU	International Telecommunication Union
KB	King's Bench
LMA	Loan Market Association
MPEPIL	Max Planck Encyclopedia of Public International Law
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation for the Harmonization of Business Law in Africa
PCA	Permanent Court of Arbitration
PHEIC	Public Health Emergency of International Concern
PICC	UNIDROIT Principles of International Commercial Contracts
RIAA	Reports of International Arbitral Awards
SGCA	Singapore Court of Appeal

SGHC	High Court of Singapore
SSCs	Standard Contractual Clauses
TFEU	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCP	Uniform Customs and Practice for Documentary Credits
UK	United Kingdom
UKHL	House of Lords (United Kingdom)
UKPC	Judicial Committee of the Privy Council (United Kingdom)
UKSC	Supreme Court of the United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
WB	World Bank
WTO	World Trade Organization
YCA	Yearbook Commercial Arbitration

## **ABSTRACT**

This thesis explores how globalization has impacted the conflict of laws and explores how it is transforming the theoretical basis, structural doctrines and functional role of the discipline. Historically, the conflict of laws is built around territorial sovereignty, state-based connecting factors, and legal certainty. Globalization, however, has transformed the context within which the discipline functions due to increased cross-border trade, digitalization, rise of private actors, and increased non-state rule-making. The key question that this thesis seeks to answer is whether these developments only continue to increase cross-border disputes or rather bring about a more profound structural change in the nature and functioning of the conflict of laws. It explores classical theories of conflict of laws, globalization, the place of sovereignty and legal certainty, the growth of party autonomy in international trade and the development of privately produced normative structures. By so doing, the paper will measure the theoretical and practical implications of globalization on the modern day private international law.

This thesis finds that globalization has brought about a structural change and not a quantitative increase in the number of cross-border transactions. It redefines, but does not abolish, state sovereignty; questions territorially-bound connecting factors; and redefines legal certainty as a strict state-based principle into a more plural and controlled one. This study also concludes that globalization enhances the autonomy of parties as a key regulatory feature in transnational business and enables the

development of what this thesis theorizes as International Subjective Rules: party-based, transnational normative systems that transpire across jurisdictions and impact the settlement of private international disputes. These results indicate that the conflict of laws can no longer be sufficiently considered as a state-centric field. Rather, it is becoming a hybrid and pluralist form of governance where the law of the state, private ordering, transnational norms, and regional cooperation interplay. States are still considered to be indispensable as the ultimate source of legitimacy, enforcement and the control of public policy, but their functions are more and more mediated by judicial discourse, international cooperation, regional integration, and selective acknowledgment of non-state normative orders.

The thesis comes to the conclusion that conflict of laws is not decreasing in the context of globalization. Instead, it is being redefined as a core constitutional and coordinating mechanism of world private ordering. It plays a mediating role between sovereignty, market integration, and legal pluralism in this new role and is still critical to the regulation of the private legal relations in a changing global legal environment.