

RESEARCH ARTICLE

What investors want from whom: international organizations and the International Association for the Promotion and the Protection of Private Foreign Investments (APPI) 1958–1974

Filip Batsel^{1,2} and Nicolas Hafner³ 

¹Legal History Institute, Ghent University, Gent, Belgium, ²Contextual Research in Law, Vrije Universiteit Brussel, Brussels, Belgium and ³Department of History and Politics, Graduate Institute of International and Development Studies, Geneva, Switzerland

Corresponding author: Nicolas Hafner; Email: nicolas.hafner@graduateinstitute.ch

Abstract

Using archival material from states, international organizations, and business actors, this paper explores how the Association for the Promotion and Protection of Private Foreign Investments (APPI), a transnational business interest association (BIA), liaised with different international institutions to lobby for better foreign investment protection. We zoom in on the United Nations, the Organization for Economic Co-operation and Development, and the World Bank to examine how APPI influenced the global institutional landscape during its heydays from 1958 until 1974. We show that business actors, particularly oil and banking corporations, created APPI as a nimble, efficient alliance that could move faster than existing BIAs. We further demonstrate how companies “forum shop” between different BIAs, and how APPI injected its ideas into the policymaking process, using the framework of the three faces of power. By shedding light on the role private business actors played in foreign investor protection, the paper contributes to a better understanding of the emergence of global economic governance in the second half of the 20th century.

Keywords: business interest association; lobbying; forum shopping; international organizations; investment protection

Introduction

In late September 1959, the World Bank’s Board of Governors gathered in Washington D.C. for its annual meeting. In his opening address, Eugene Black, the Bank’s second president, passionately called for an international entity to unite the world’s investors. “Made up exclusively of private international investors,” he said, this entity could “more effectively [than the Bank] tell the story of what is being done and champion the kinds of policies which attract such investment.” In Black’s view, telling this story would help spread the word of the “very great opportunities which exist for the expansion of private international investment.”¹ But why was there a need to convince people of the advantages of private investment? The late 1950s were marked by political decolonization that caused uncertainty among the Western business elite. Many newly independent states, in their quest for permanent sovereignty over their natural resources, questioned, demanded changes to, or nullified the legal arrangements established with foreign companies in an imperial framework.² The dispute over the nationalization of

¹World Bank, 1959 annual meetings of the Boards of Governors: summary proceedings, available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/676041468169754643/1959-annual-meetings-of-the-boards-of-governors-summary-proceedings>.

²For instance, Western oil companies controlled around 80 percent of the world’s oil exports and accounted for 90 percent of production in the Middle East up until the early 1970s, (Garavini 2012: 166).

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Iranian oil in 1951 and the Egyptian government's seizure of the Suez Canal in 1956 had left a lasting impression on Western companies' management. The times that one could send a gunboat to lend force to one's demands were over, remarked Hermann J. Abs, the Chairman of Deutsche Bank from 1957 to 1967 and one of this article's protagonists.³ How could investors better safeguard their properties abroad?

One way was to improve the protection of private foreign investment under international law. To this end, representatives from Big Oil and other companies established the International Association for the Promotion and Protection of Private Foreign Investment (APPI) in 1958. This transnational business interest association (BIA) suspiciously resembled the international entity that World Bank president Black invoked a year later. In fact, what would subsequently be referred to as "Declaration Black" was probably sponsored by Leo D. Welch, who was a director of Standard Oil of New Jersey (today ExxonMobil) and a member of APPI.⁴ He thought that a transnational BIA could effectively lobby for better legal protection of foreign investments through private diplomacy. This would have the enormous advantage of making heard the "authentic" voice of investors, rather than being considered the tool of any government, particularly capital-exporting Western countries that could possibly be accused of neo-colonialism.⁵ How did business contribute to global economic governance, making its voice heard at international organizations (IOs)? Using internal deliberations between businessmen striving for better investment protection, this article examines how APPI lobbied three IOs to achieve its goals.

Business power, BIAs and international organizations

APPI concentrated its efforts in particular on the Organization for Economic Co-operation and Development (OECD), the World Bank (WB), and the United Nations (UN). Although scholars have extensively researched IOs, especially the UN and the World Bank, we know relatively little about the interaction between these organizations and transnational BIAs. As far as the UN is concerned, scholars have focused on the International Chamber of Commerce (ICC), a privileged interlocutor for business advocacy at the UN, or have concentrated on the myriad attempts to regulate multinational corporations at the UN.⁶ Even less research exists on transnational BIAs' relations with the World Bank and the OECD. Regarding the World Bank, work on the Bank's relations with non-governmental organizations (NGOs) has focused on efforts by non-business related NGOs to increase transparency at the Bank.⁷ While statistical evidence suggests that corporate lobbying seems to matter in some aspects of Bank lending policy,⁸ we do not know much, if anything, of transnational BIA-World Bank interactions, a topic not dealt with in any of the commissioned histories of the Bank.⁹ The same is true of the OECD. Two recent histories have significantly increased our understanding of the OECD's role in global governance. Yet, neither work discusses business-OECD relations extensively.¹⁰ The role of business actors in some of the OECD's work has been occasionally touched upon.¹¹ Still, only one short survey article exists on the Business and Industry Advisory Committee (BIAC), the dedicated organization for business lobbying with the OECD.¹² In short, although no one doubts that business advocacy groups regularly interact with IOs, there is a lack of in-depth case studies on the interactions of specific transnational BIAs with IOs, an issue we start to address with this article.

³Die rechtliche Problematik privater Auslandsinvestitionen, Vortrag von Herrn Abs am 16.12.1968 in Karlsruhe vor der "Juristischen Studiengesellschaft." Deutsche Bank Archives (hereafter DBA), V01/4413.

⁴APPI—Public Relations, Paper prepared by Leo Welch, director of Standard Oil Company (New Jersey) and used in part by Eugene Black of IBRD, undated (presumably 1958 or 1959). TotalEnergies Archives (hereafter TEA), 50ZZ572/-19.

⁵Ibid.

⁶See i.a. Ridgeway (1959), Dell (1990), Hocking and Kelly (2002), Sagafi-nejad and Dunning (2008) and Bair (2015).

⁷Fox and David Brown (1998).

⁸Malik and Stone (2018).

⁹Mason and Asher (1973) and Kapur, Lewis, and Webb (1997).

¹⁰Schmelzer (2016) and Leimgruber and Schmelzer (2017).

¹¹Walter (2001).

¹²Aubry (2010). Admittedly, one difficulty is that BIAC has not kept an archive. E-mail from BIAC Secretary to F. Batselé, 2 February 2023.

As Tallberg et al. show, BIAs can, for example, influence IO policymaking through an exchange logic, in which IOs give access to BIAs in exchange for obtaining specialized knowledge IOs cannot produce themselves.¹³ We provide additional depth to such arguments by conducting an empirical study of APPI, providing a close reading of the archival traces this organization has left behind. We do this through the lens of business power. Power is a key concept that has occupied scholars in the social sciences for generations. While much of this literature focuses on state power, scholars have also theorized business power, including in two special issues of this journal.¹⁴ Rollings covers much of the recent literature on business power in a review article and encourages business historians to engage more directly with power in their work. He suggests that historical work can be an excellent technique for studying power, but only when the concept is addressed head on.¹⁵ With concepts of power abounding, Dowding contends that since power “can be wielded in different ways,” there are also many ways of how people describe it, depending on the context.¹⁶ In other words, power is “simple, what is complex is the way it is represented.”¹⁷ Thus, for Haugard power is a family resemblance concept, with no one single best definition, but where pragmatic criteria determine usage.¹⁸

In this article, we apply the three faces of power framework put forward by Doris Fuchs, both in a 2007 monograph and an article in this journal together with Markus Lederer.¹⁹ Whilst the framework they propose has been around for a longer time in scholarship on power, they adapt it specifically to the context of business power.²⁰ In a nutshell, the three dimensions or faces refer to different ways of how power can be wielded and thus perceived. The first “focus[es] on the direct influence of an actor on another actor,” the power to achieve results despite resistance. Scholars most commonly attribute lobbying and campaign financing to this aspect. The second face of power “emphasize[s] the input side of policy and politics and the predetermination of the behavioral options of political decision-makers.” Authors often refer to the agenda-setting powers of business in this regard. Conversely, some issues never appear on the agenda because actors know that they are not able to push them through in a specific context. The biggest difficulty with this aspect of power is that it leaves fewer traces and is thus very difficult to prove. The framework’s third dimension is more sociological, seeing power as “a function of norms, ideas and societal institutions [. . .] reflected in discourse, communicative practices, and cultural values.”²¹ It impacts the terminology in which actors frame their policy issues. As Ronit expresses it in the context of law: “[p]ut simply, law can only govern what it can describe, and those who make the description are influential.”²² Discursive power is linked to legitimacy: we have to trust the sender of a message to think that a statement is true and valid.

This way of understanding power has received its fair share of criticism. For instance, the number of “faces” remains a contentious topic in itself, with Fairfield suggesting that instances of discursive power can be subsumed within either instrumental or structural power.²³ Others propose to move beyond the idea of “faces of power” altogether. For example, Babic et al. find that the distinction between structural and instrumental power is often “too rigid” and put forward a hybrid framework that combines “empirically observable instrumental and harder-to-observe structural power relations.”²⁴ Other scholars such as Hayward take issue with how narrowly scholars conceive of power relations by presupposing a powerful agent that through exercising power can constrain the action of someone else who is less powerful. According to her, power should be “de-faced” and reconceptualized as

¹³Tallberg et al. (2018).

¹⁴For introductions to these special issues, see in particular (Fuchs and Lederer 2007; Culpepper 2015).

¹⁵Rollings (2021).

¹⁶Dowding (2021: 14).

¹⁷Gallarotti (2021: 2).

¹⁸Haugard (2010).

¹⁹Fuchs (2007) and Fuchs and Lederer (2007).

²⁰Since, the framework has been applied in many publications, such as Mikler (2018) and Wilks (2013).

²¹Fuchs and Lederer (2007: 4, 5, 8).

²²Kellow, Porter and Ronit (2021: 8).

²³Fairfield (2015: 53).

²⁴Babic et al. (2022: 137).

“boundaries that constrain and enable all social action.”²⁵ That way, we come to see that all actors face constraints and that no one can operate outside the field of what is possible. While these contributions offer valuable avenues to research power in different contexts, we believe that Fuchs and Lederer’s framework, and using the idea of faces of power specifically, helps us better understand the patterns of influence that emerge from APPI’s archival records. In studying APPI’s relationships with IOs, we identify instances of direct lobbying (instrumental power), agenda setting (structural power), and ideational framing (discursive power).

Transnational BIAs have recently started getting the attention of scholars. A special issue of *Business History* surveys the existing literature and introduces new case studies. As Eichenberger, Rollings, and Schaufelbuehl note, historical research into transnational BIAs was initially written—when at all—by business insiders, and has tended to focus on peak associations, such as the ICC, Business at OECD (BIAC) or the International Organisation of Employers.²⁶ These peak associations can be defined as the small group of very large associations that “aspire to organize vast sections of global business.”²⁷ Using Ronit’s typology of BIAs to classify some of that special issue’s articles, David & Eichenberger’s contribution to the special issue on the ICC deals with peak business interest associations, whilst Ballor’s piece on BIAs in the European automobile sector looks at industry associations and Pitteloud’s article examining the Interlaken Conferences focuses on more informal clubs.²⁸ These contributions teach us that private business diplomacy bloomed in sync with the growth of the global system of international organizations in the 20th century. Our contribution builds on this, illustrating how APPI, a BIA that can best be classified as an alliance of corporations, engaged in private diplomacy. Alliances of corporations tend to be formed by small groups of particularly committed corporations in reply to specific demands perceived as not being adequately treated by peak associations.²⁹ As we will show, APPI fits this bill for international investment protection. Corporations, as well as BIAs such as the APPI, have also gotten more attention from international lawyers, such as Durkee, Pahuja, Saunders, and Lustig, who provide alternative view to the state-centric nature of much international legal scholarship, demonstrating the importance of corporate actors in the production of international law.³⁰

On APPI specifically, Perrone and St John discuss aspects of APPI’s work, primarily based on archival correspondence between the group and Swiss policymakers in the Swiss Federal Archives.³¹ L’Huillier assesses the importance of APPI for the *Compagnie française des pétroles* (today TotalEnergies).³² Several recent contributions combine sources from various private and state archives to examine APPI’s activities. Boase looks at APPI through the lens of U.S. and UK primary sources, discussing its creation and involvement in the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) Convention negotiations.³³ Hafner examines the origins of the group, the schemes APPI promoted on an international level, and the role it played in disputes between foreign investors and host states.³⁴ Batselé discusses the group’s origins and three specific multilateral treaties it was involved in, focusing on the text and context of the various legal proposals.³⁵

We research APPI through a diverse set of internal records from some of its key members that can be found in company archives.³⁶ These are Deutsche Bank’s Historical Institute, the TotalEnergies Archive

²⁵Hayward (1998: 18).

²⁶Eichenberger, Rollings and Schaufelbuehl (2023: 7).

²⁷Ronit (2018: 21).

²⁸Ronit’s typology refers to five categories of global business associations: peak associations, industry associations, alliances of corporations and associations, clubs and think tanks, and facilitators, (Ronit 2018).

²⁹Ronit (2018: 90–114).

³⁰Durkee (2016), Pahuja and Saunders (2019) and Lustig (2020).

³¹St John (2018: 84–87) and Perrone (2021: 51–80).

³²L’Huillier (2010).

³³Boase (2014: 180–232).

³⁴Hafner (2022).

³⁵Batselé (2023).

³⁶Although archival records hinted that the organization’s documents were transferred to *Crédit Suisse*’s archives, this bank’s archive indicated it had no records on APPI (E-mail from A. Bischofberger, APPI’s last secretary-general, to F. Batselé, 9 February 2021). Given that *Crédit Suisse* does not allow external researchers access to its archive, we could not confirm this ourselves.

and the archives of former APPI members Dirk Stikker, a Dutch liberal politician and former Shell director, and Arthur H. Dean, a diplomat and lawyer with close ties to Standard Oil of New Jersey. Smaller collections also exist in other company archives.³⁷ We supplement our sources with documents from IO and state archives. We found various references to contacts with APPI in archival records of the World Bank and OECD, sometimes via the intermediary of other business organizations.³⁸ Only very limited correspondence between APPI and the UN can be found in the UN Archives, although many more records likely existed.³⁹ Finally, as all of these IOs are also driven by the desiderata of their member states, we analyzed the traces APPI left in national archives, particularly the German, Swiss, Dutch, and British state archives. Despite the broad array of primary sources consulted, lack of access to some archives, redacted files, and the obvious limits of the archive occasionally put us on more speculative ground when trying to attribute causality to APPI.

We first briefly describe how APPI worked and the key players involved. We then outline which policies APPI pursued at the OECD, the World Bank, and the UN. We explain how cooperation between the institution and business actors works according to the respective organizations' rules. We assess the role of APPI members in shaping policy at each of these IOs in practice, both by liaising with these IOs and lobbying with member states of the organizations. We show that APPI adopted a combination of pragmatism and ideology in approaching IOs, engaging in forum shopping between IOs. This process refers to the "strategic selection and use of policy venues by actors in order to advance their policy goals."⁴⁰ We further demonstrate that APPI was usually a privileged actor in having its views discussed, independent of whether formalized relations existed between it and the IO. Our analysis also shows that IOs had their own agendas, sometimes used business input for their own purposes, and could push back against the views of private business.

Coordinating investor interests: APPI's functioning and structure

We now turn to the creation, functioning, financing, and activities of APPI. A group of Western companies founded the International Association for the Promotion and Protection of Private Foreign Investments in 1958, fearing that newly independent countries might nationalize their investments, especially in the oil industry. It was supposed to be a temporary organization to coordinate already existing initiatives for better legal protection of foreign investments under international law. Hermann Abs had, for instance, from the outset rejected the "setting up of a major new institutional infrastructure," favoring an approach that would—with the lowest expenses possible—only complement, not replace, the activities of other national and international groups active in this domain.⁴¹

APPI brought together different existing business initiatives concerned with protecting foreign investment under international law. Oil interests were key in the United States, the United Kingdom, and France. In APPI, these interests were represented by Standard Oil's chief counsel Arthur H. Dean, Sir Hartley Shawcross, a director at Shell, and two advisors of the *Compagnie française des pétroles*, Pierre Piffault, and the former high diplomat René Massigli. The oil companies involved in APPI's creation were keen to conceal their role and broaden the group for tactical reasons.⁴² Thus, they recruited interested parties in other sectors, especially among banks. The chief representative of the

³⁷These include BNP Paribas, Unilever and Electrobél. We know that there is also a larger number of papers pertaining to APPI at the Foundation for Economic History Research within Banking and Enterprise in Stockholm, providing the Swedish businessmen's perspective, which we did not use for this paper.

³⁸We used BIAAC records from the Confederation of British Industry's archives, kept at the Modern Records Archives (hereafter MRA).

³⁹The relevant inventory (United Nations Registry Section (1946–1979)) has a very thin folder on consultative arrangements with APPI ("Pt. 3") for the period 1973–1978. It is most likely that the responsible office never sent Part 1 or 2 to the UN Archives. E-mail from UN Archives and Records Management Section to F. Batsélé, 25 January 2024.

⁴⁰Murphy and Kellow (2013: 139).

⁴¹Letter by Hermann J. Abs to Monsieur Pierre Piffault, Secrétaire Général de l'Association de droit Minier et Pétrolier, March 2, 1959. DBA, V01/4403. In the original French, "mise en place d'un grand 'nouvel appareil.'"

⁴²Shawcross for example stated that "I still feel that it is of the greatest importance to establish this new organization in an atmosphere which has no smell of oil." Letter from Hartley Shawcross to Mr. Pierre Piffault, July 29, 1958. TEA, 21V00621-8.

banking sector was the above-mentioned Hermann J. Abs, arguably APPI's most influential member.⁴³ Geneva was chosen as the organization's seat as it was deemed important not to get associated with colonialism, oil interests, or great power politics—Switzerland appearing neutral in all these aspects. For the same reasons, as well as his international reputation in the sector, the Swiss banker Eberhard Reinhardt of Credit Suisse served as the association's first president.⁴⁴

APPI studied, drafted, and promoted three different multilateral proposals designed to improve the legal protection of foreign investments. It conceived of them as complementary rather than mutually exclusive. First, APPI put forward a multilateral investment protection treaty, the so-called Abs-Shawcross Draft Convention, which aimed to better protect foreign investments under international law (e.g. full compensation for expropriation). Secondly, APPI sought to create an international investment guarantee agency. Publicly owned investment guarantee systems provide a form of state-backed insurance to investors, who, in exchange for paying a yearly premium, can be insured against political risks such as expropriation, currency inconvertibility, or armed conflict. Thirdly, APPI also drafted a statute for an investor-state arbitration mechanism to create a new international body where arbitrators could issue an award in case of disputes between investors and states, effectively bypassing national courts. The content of APPI's legal proposals is described in more detail elsewhere.⁴⁵ These articles illustrate how one of APPI's key strengths was that it could rely on a network of experienced company lawyers, some of whom were well-versed in the intricacies of international law and communicated to public officials by proposing to and discussing with them detailed legal proposals.

Beyond studying and drafting investment protection schemes, APPI was a platform for exchanging views while also providing a substantial service to its members through periodical reports covering the evolution of the political and regulatory framework for private foreign investment.⁴⁶ It liaised with many organizations, both international (e.g., organizations that were part of the UN system, such as the United Nations Conference on Trade and Development (UNCTAD)) and non-governmental (e.g., the International Bar Association), usually to support or influence efforts to promote the investment climate writ large. Overall, whereas APPI's name officially referred to both the promotion and the protection of private foreign investment, it is fair to say that the latter interest certainly trumped the former. Abs himself stated that the reference to encouragement was a discursive strategy “for appearance's sake,” intending to placate developing countries' interests.⁴⁷ In the early 1960s, APPI also became more involved politically, intervening on behalf of investors in some investment disputes, for example organizing a mission to meet with the presidents and a number of ministers from Argentina and Peru.⁴⁸ Focusing on APPI's lobbying activities with IOs, we treat it as a uniform actor with a clearly defined purpose. However, this purpose was subject to much internal debate. APPI members spent considerable time on organizational matters and hashing out internal differences. In its early days, APPI's French members wanted the organization to assume a very active role, creating new institutions under its auspices, for example, a center to settle disputes between investors and states.⁴⁹ This did not sit well with other members, and a Belgian representative stressed that the association was more “coordinator” than “motor” and should be careful not to offend other parties.⁵⁰

⁴³Abs' motivation to participate in APPI was linked to his own draft proposal for a multilateral investment protection convention, the Magna Carta for the protection of foreign interests, which he merged with Shawcross' project to the Abs-Shawcross Draft Treaty.

⁴⁴Groupe international d'études pour la promotion et protection des investissements privés en territoires étrangers, réunion du lundi, 8 Décembre, Genève, undated (likely December 1958). TEA, 21V00621-4.

⁴⁵Perrone (2021) and Batselé (2023).

⁴⁶In view of the informational wealth they contained, individual bulletins could count 50 pages and more.

⁴⁷Letter from Hermann J. Abs to F.A. Guépin, Esq., The Shell Petroleum Company Ltd., August 7, 1958, DBA, V01/4403.

⁴⁸APPI Doc. 9/68, General policy and role of the APPI: the APPI's role in investment disputes (Action to be taken by the APPI in case of acts by governments detrimental to the international flow of private capital), May 15, 1968. DBA, V01/4412.

⁴⁹Rapport du Secrétaire Général, December 14, 1959. DBA, V01/4403.

⁵⁰APPI Doc. 87/59, Compte-Rendu Analytique de la 3ème reunion du Comité de Direction tenue à Genève, les 2 et 3 octobre 1959. TEA, 21V00621-4.

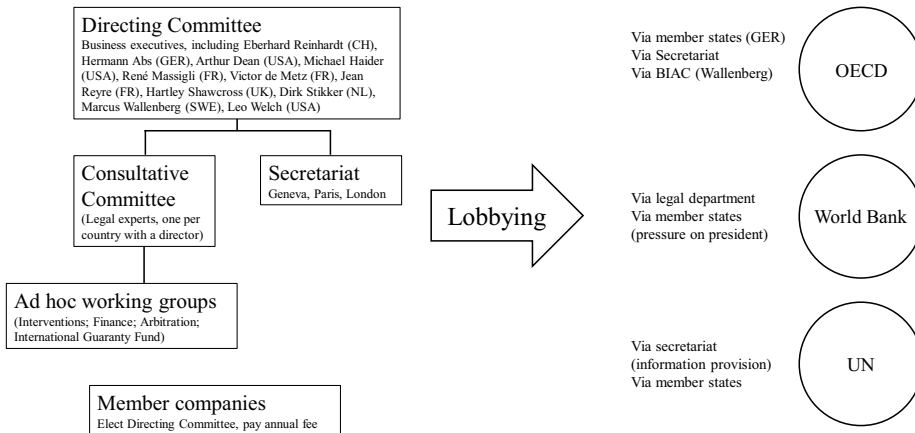


Figure 1. Schematic overview of the Association for the Promotion and Protection of Private Foreign Investments' internal organization and lobbying with international organizations.

Indeed, BIAs usually avoid competition regarding their core functions and seek to “establish a division of labor wherever possible.”⁵¹ In APPI’s case, the relationship with the ICC was especially tricky. The latter’s secretariat viewed the new organization with suspicion, accusing APPI of competing for the same time and money needed by the ICC.⁵² As it were, one reason for APPI’s creation was Abs’ fear that investment protection might slip “out of the hand of our little sponsoring group” if “too many people and organizations deal with the problem separately and divergingly.”⁵³ In short, APPI believed it could act faster and more efficiently than the ICC, which had a far heavier organizational structure. Although the relationship was difficult to manage, especially during the first few years, some sort of *modus vivendi* was eventually found. APPI did not, for example, work that much on international investment insurance initially, because the ICC made clear it considered this its prerogative.⁵⁴ In turn, when it became clear that the ICC would focus on international commercial arbitration instead of arbitration between foreign investors and states, it was easier for the ICC to give ground to the APPI on this.⁵⁵ Considering that quite a few APPI directors were also active within ICC in some capacity, it seems to us that these businessmen engaged in forum shopping between BIAs, viewing APPI as more suitable to pursue the issue of better legal protection of foreign investments.

Organizationally, APPI was divided into two committees, one consisting of high-level business executives, and another of experts, usually lawyers (see Figure 1). The Directing Committee was APPI’s political organ. It was responsible for the association’s policy and executive decisions. Two other organs did most of APPI’s policy-related work and preparation for meetings: the secretariat and the Consultative Committee. The latter assembled one legal expert from every country with an APPI director. These experts were often counsels working for the same company as their respective APPI director and, enjoying their trust, would put in legal terms the broad ideas expressed by the business executives in the meetings of the Directing Committee. Most of these legal experts have remained out of the spotlight, but they were essential to how APPI tried to influence politics. Well-connected amongst their peers, members of the APPI Consultative Committee liaised regularly with legal staff from IOs and national government administrations, who often used the legal expertise they provided.⁵⁶ Already in 1965, APPI’s membership totaled more than 220 companies, mainly from the petroleum, banking, mining, and industrial sectors.⁵⁷ A table that lists the sums received from each country between 1959

⁵¹Ronit (2018: 12).

⁵²Letter from Jeremy Raisman to Lord Shawcross, December 30, 1960, TEA, 50ZZ546-32.

⁵³Letter from Hermann J. Abs to F.A. Guépin, Esq., The Shell Petroleum Company Ltd., August 7, 1958. DBA, V01/4403.

⁵⁴Letter from Lord Shawcross to Jeremy Raisman, February 7, 1961. TEA, 50ZZ546-27.

⁵⁵Letter from Pierre Piffault to René Massigli, January 26, 1960. TEA, 50ZZ546-27.

⁵⁶Batsélé (2023).

⁵⁷APPI, Liste des membres au 1 Mai 1965, May 22, 1965. DBA, V01/4411.

Table 1. Sums received from countries that had APPI Directors between 1959 and 1968, and main companies involved.⁵⁸

Country	Sum (in USD)	Key companies involved (by size of contribution or involvement)
Australia	3.300	Bank of New South Wales
Austria	8.800	Österreichische Creditanstalt
Belgium	14.650	Banque de Bruxelles, Société Générale de Belgique
Canada	5.700	Royal Bank of Canada
Denmark	8.800	Privatbanken, Nordiske Kabel- og Traadfabrikker A/S
France	50.600	Association de droit minier et pétrolier (umbrella organization), Banque de Paris et des Pays-Bas, Compagnie française des pétroles
Germany	46.100	Deutsche Bank, Gesellschaft zur Förderung des Schutzes von Auslandsinvestitionen e.V. (umbrella organization, i.a. Siemens)
Italy	13.400	Fiat, Banca Commerciale Italiana
Japan	9.600	The Bank of Tokyo
Netherlands	19.350	Verbond van Nederlandsche Werkgevers (umbrella organization), Nederlandsche Handel-Maatschappij, Philips NV
Norway	1.600	Den norske Creditbank
Spain	3.800	Banco Urquijo
Sweden	15.000	Stockholms Enskilde Bank (Wallenberg family)
Switzerland	20.750	Crédit Suisse, Industrie-Holding (umbrella organization, i.a. Nestlé)
United Kingdom	68.100	Shell, Unilever, Imperial Chemical Industries, BP, British-American Tobacco
United States	72.400	Standard Oil of New Jersey, Gulf Oil, Standard Oil of California (Socal), Texaco, IBM, General Motors, US Steel
Total (1959–1968)	352.350	

and 1968 shows that companies from the United States, the United Kingdom, France, and Germany contributed the most to APPI (see Table 1). In dollars value anno 2024, APPI had, on average, an annual budget of a bit more than 300.000 U.S. dollars up until 1968.

Beyond this, APPI could draw on the resources of many of its member companies, which let their employees work on APPI projects. Second, and more importantly, APPI had a relatively lean budget because it functioned mainly through its individuals. Members of both committees worked in their personal capacity and remained unpaid. Due to the informal character of much of APPI's activities, it relied on its members' lobbying and backchannel work with relevant stakeholders. At the same time, its members provided the organization with information gathered through direct contacts or their companies, which APPI often circulated further in interested circles.

After a very active period from the late 1950s until the early 1970s, APPI members increasingly questioned the organization's role, feeling it had fulfilled its initial purpose of studying and promoting legal instruments to better protect foreign investments. Consequently, APPI was transformed into a discussion group of high-level business executives without a permanent secretariat and member companies in 1974, until it was disbanded in 2005.⁵⁹ The organization's members still met annually after 1974, gathering for a day to discuss the general business and investment climate writ large. The membership would also increasingly include representatives from non-Western states, initially mostly from oil-exporting countries, who had become capital-exporters after the oil shock. APPI's Western core of members believed this expansion would allow it to give these representatives "proper guidance"

⁵⁸APPI, Sommes totales reçues de 1959 à 1968, par pays en US \$, undated (likely 1969). TEA, 21V00621-16.

⁵⁹Letter from A. Bischofberger to N. Hafner, February 8, 2023, on-file with author. APPI Doc. 5/74, Meeting of the Directing Committee in London (April 30, 1974), April 30, 1974. DBA, V01/4417.

for their investment policies.⁶⁰ There remained little, if any, scope for formal lobbying in the revamped organization, which also explains why APPI was not involved in the debates around the New International Economic Order during the latter half of the 1970s at the UN. Clearly, using Ronit's typology, APPI had become more of an informal club or think-tank.⁶¹ As a result of this transformation, APPI also asked the various IOs with which it liaised to remove APPI from their correspondence list, formally cutting remaining ties.⁶²

A forum of like-minded countries? APPI and the OECD

The project APPI members wanted to see come to fruition in the OECD was arguably their most important: a multilateral investment code.⁶³ The instrumentalist face of power is clearest in APPI's engagement with the OECD, where it tried to convince both—sometimes reluctant—member states and staff at this IO to adopt a multilateral investment treaty. Private business actors masterminded this proposal. In particular, Hermann Abs and Lord Shawcross had been working on this topic for a number of years, even predating APPI, creating a common draft treaty informally known as the Abs-Shawcross Draft Convention in 1959. This proposal was subsequently endorsed by APPI's other members, putting APPI on course to push for a multilateral convention that wanted to ensure nondiscriminatory treatment for foreign property, the need to respect agreements states had made with private investors (a nod and a wink to oil concessions, above all) and to provide “prompt, adequate and effective” compensation for expropriation.⁶⁴

To tell the story of the OECD Draft negotiations in a nutshell⁶⁵: after private business interests had been working on the matter from 1957 onwards, in 1960, the OECD Council agreed on a mandate to have one of its committees prepare an international convention to protect foreign investments. This treaty had to take into account the Abs-Shawcross Draft, which Germany had submitted.⁶⁶ Over the following years, the APPI-sponsored draft hence served as the basis for negotiations of the so-called OECD Draft Convention on the Protection of Foreign Property, which ended in 1967 with the adoption of a resolution by the OECD Council in which the principles embodied in the draft were reaffirmed, but without a legally binding international treaty being signed, as APPI would have preferred.⁶⁷

APPI had reasons to prefer the OECD above other IOs. It believed that choosing the OECD would allow the treaty to be discussed by relatively like-minded countries. APPI hoped the treaty's adoption within the OECD would subsequently lead capital-importing countries to sign up for the treaty too. As an American Shell lawyer close to Shawcross, G.W. Haight succinctly stated, it was “not necessary to try to bring in all underdeveloped countries. The objective is to spread the gospel gradually and to avoid large conferences at which principles might get watered down.”⁶⁸ Likewise, using the OECD allowed APPI, in 1959 at least, to bypass one awkward problem: U.S. opposition to their plans. As the responsible U.S. policymaker stated, this disagreement was more political than legal. The United States preferred bilateral agreements and feared that a multilateral code drafted by capital exporters would antagonize developing countries.⁶⁹ This opposition irked the U.S. oil sector in particular, which was the

⁶⁰ APPI, Dr. Krebs, Discussion-Paper for the Montreal Meeting, June 6, 1975, undated (likely spring 1975). DBA, V01/4417.

⁶¹ Ronit (2018: 90–114).

⁶² Notiz an Herr Hermann J. Abs, von Dr. Ulf R. Siebel, betreffend Umgestaltung der APPI, June 24, 1974. DBA, V01/4417.

⁶³ The OECD was created in September 1961, succeeding the Organisation for European Economic Co-operation (OEEC). We use the acronym OECD throughout this article.

⁶⁴ APPI Resolution No. 1 on the principles of international law relating to private foreign investment, October 3, 1959. DBA, V01/4403.

⁶⁵ The legal aspects of these negotiations are dealt with in St John (2018: 73–99), Perrone (2021: 67–80); Batsel  (2023: 429–36).

⁶⁶ OECD C/M (60) 9, 14 April 1960. OECD Archives, 213751.

⁶⁷ OECD, Resolution of the Council on the Draft Convention on the Protection of Foreign Property, OECD/LEGAL/0084, available at <https://legalinstruments.oecd.org/public/doc/242/242.en.pdf>.

⁶⁸ Letter from G.W. Haight to Arthur Dean, APPI, October 12, 1960. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

⁶⁹ Letter from Douglas Dillon to Lord Shawcross, July 10, 1958, and letter from Douglas Dillon to Lord Shawcross, December 4, 1958. TEA, 50ZZ546-24.

main U.S. business group lobbying the State Department to change its opinion.⁷⁰ Because the United States was only an observer at the OECD at the time, it did not oppose an agreement between the European states in that forum. Unluckily for Abs and Shawcross, the United States became an OECD member in 1961.

APPI's lobbying in favor of the OECD Draft Convention took place on different levels. Most prominently, considering that the OECD takes decisions by consensus, it happened via member states. The intensity of this private lobbying campaign by APPI members was even noted by members of the OECD Secretariat, who remarked in 1962 that "France and the United Kingdom were originally among the more skeptical members and it was interesting to watch how strong pressure from private interests gradually changed their attitude."⁷¹ This speaks to APPI's ability to convince state actors to adopt a specific policy. Overall, APPI members arguably had the most success influencing policy in Germany. As an APPI member already active in the 1960s confirmed, Hermann Abs was the most influential of all members, having the ear of Chancellor Konrad Adenauer as his most prominent economic adviser.⁷²

Abs' influence was clearest in getting a multilateral convention on the OECD's agenda, something that private individuals cannot do, but states can. Abs went straight for the highest levers of power, successfully asking Adenauer to support his proposal.⁷³ St John describes the relationship between Abs and the German government as one of "benevolent distance."⁷⁴ Even though German officials had economic and political reasons to support better legal protection for foreign investments, there were also some disagreements with Abs' approach, German officials initially believing that some of the legal provisions in Abs' proposal went too far.⁷⁵ Hence, German officials found a compromise: they submitted Abs' plans on Germany's behalf with the OECD, but to keep a measure of distance, Germany initially only gave a declaration of support (*Wohllollenserklärung*), clarifying it was not an official government proposal.⁷⁶

During this period, APPI also intensely liaised with the OECD Secretariat itself. Efforts here were more subtle: the OECD is a member-state-driven organization and organized business liaison officially takes place via BIAC. But that did not mean that Secretariat members were without their own interests or views. At least initially, several OECD Secretariat members were interested in seeing the work on the OECD Draft Convention proceed. At the end of the 1950s, the organization had gone through a bruising episode: the failure to realize a free trade agreement among its members. As a result, especially during the early deliberations, the OECD Secretariat unintrusively positioned itself in favor of the draft. As the head of its Trade and Finance division stated, "we should thus I believe try to evolve as far as possible new activities in fields where this Organization can do a useful job."⁷⁷ Members of the OECD Secretariat were also in touch with some of the French, English, and German interests pushing the convention, at one point asking one of Abs' deputies to "do all in their power to persuade the responsible authorities in their countries to become more open-minded to the problem."⁷⁸

APPI members, in Germany and elsewhere, were also closely involved in the next phase of negotiations. After a mandate had been agreed upon at the OECD, its Committee for Invisible Transactions and a group of legal experts appointed by member states set about writing a Draft

⁷⁰Letter from G.W. Haight to Arthur Dean, APPI, October 12, 1960. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

⁷¹Brief on the work of the organization on a draft convention on the protection of foreign property, 07 March 1962. OECD Archives, 213751.

⁷²Letter from H. Halbheer (APPI member from 1965, Secretary-General 1982-1992) to F. Batselé, October 12, 2021. Also see Gall (2006).

⁷³Letter from Hermann J. Abs to Konrad Adenauer, March 15, 1958. DBA, V01/4403.

⁷⁴St John (2018: 81–83).

⁷⁵Aufzeichnung über die Ressortbesprechung vom 11. Juli 1958 über den Schutz von Auslandsinvestitionen, July 16, 1958. Political Archive of the German Federal Foreign Office (hereafter PA AA), REF. 404_IIIB3_61.

⁷⁶OEEC: Erklärung der Regierung der BRD, September 3, 1958. REF. 404_IIIB3_61 & AA to other ministries, Konvention über Vermögen im Ausland, June 19, 1959. PA AA, B56, REF.404_IIIB3_62.

⁷⁷TFD.899 Copy of memo from Dr. Keiser to Mr. Sergent, summarizing affairs to date, February 13, 1959. OECD Archives, 213752.

⁷⁸*Ibid.*

Convention, based mainly on the Abs-Shawcross draft. Germany appointed one of Deutsche Bank's lawyers to take part in the group responsible for the legal drafting.⁷⁹ Abs' influence even extended beyond Germany. When the United States became a member of the OECD, it threatened to derail the whole drafting exercise by vetoing the continuation of talks. The veto was only lifted after Abs convinced Douglas Dillon, the top U.S. official at the Department of State for this matter, at a dinner to at least allow the OECD to continue the work (although Dillon stuck to the United States' unwillingness to possibly sign the instrument).⁸⁰ The legal experts eventually finalized work on a text in 1962. Still, because several states were not planning to sign the document, the OECD Council took the step to allow member states to consult with developing countries and other interested parties about their views on the draft.⁸¹

Especially during these years, APPI members also lobbied via BIAC, business actors' formal forum for lobbying with the OECD, to try and push through the convention. According to an internal 1962 decision, the OECD can consult any non-governmental organization, provided it has wide responsibilities in general economic matters or in a specific economic sector, affiliated bodies belonging to all or most of the OECD's member countries and substantially represents the non-governmental interests in the field.⁸² In practice, the two organizations that were first recognized in 1962 have dominated non-state liaison with the OECD: the Trade Union Advisory Committee as a representative of trade unions and BIAC for business. This OECD decision can serve as an excellent example of an environment that allows some actors to exercise structural power, as it gives business and trade unions a privileged position within the organizational network of the OECD, allowing them to influence the IO's agenda.

APPI overtures with BIAC were linked to one man: the powerful Swedish industrialist and APPI Director Marcus Wallenberg Jr., who lobbied vigorously in favor of the OECD Draft. In this, he was aided by his appointment as Chairman of the Council of European Industrial Federations, the predecessor of BIAC, in 1960, a position he retained until 1963.⁸³ During its founding meeting in March 1962, BIAC's first-ever resolution called for "support and [...] the early realization" of the OECD Draft Convention.⁸⁴ In the years that followed, BIAC would keep the pressure on the OECD secretariat and member states, both in resolutions and in the liaison meetings between BIAC and the OECD.

Still, APPI members did not eventually get what they wanted most, as work on the Convention started slackening. Abs' success at influencing German policymakers went on the decline in 1963. On the one hand, this was because Adenauer stepped down as Chancellor, after which some tensions between Abs' men and the German diplomats in charge of the file came more strongly to the fore.⁸⁵ On the other hand, the OECD Draft continued to fail to materialize because of remaining opposition by some states. In particular, Spain and Turkey, two capital-importing countries, believed the Draft still imposed too many restrictions on state conduct and eventually abstained when it came to a vote in the OECD Council in 1967.⁸⁶ Germany eventually also favored the adoption of a declaration rather than a binding agreement, to Abs' dislike.

⁷⁹See i.a. Bericht über die 9. Sitzung des Ausschusses für unsichtbare Transaktionen vom 2-6.7.1962, July 9, 1962. PA AA, B56, REF. 404_IIIB3_153.

⁸⁰Letter from G.W. Haight to Arthur Dean, A.P.P.I.—O.E.C.D. Convention on Protection of Foreign Property, November 24, 1961. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

⁸¹OECD Doc. C/M (62) 23. OECD Archives, 213751.

⁸²The relevant council decision (C (62) 45) is attached to a 1999 Council document on relations of the OECD with civil society, which can be consulted at [https://one.oecd.org/document/C\(99\)130/en/pdf](https://one.oecd.org/document/C(99)130/en/pdf).

⁸³Rollings and Kipping (2008).

⁸⁴BIAC: Minutes of the Constitutive meeting, March 9, 1962. MRA, MSS.200/C/3/INT/14/1.

⁸⁵The impression of Abs' declining influence was also shared by John Blair, a Shell lawyer and APPI-member, in a letter to Dirk Stikker on July 27, 1966. See National Archives of the Netherlands (hereafter NL-HaNA), Stikker, 2.21.156, inv.nr 254. On tensions between Abs' collaborators, who continued to push heavily in favor of the OECD Draft, and German diplomats, which were by then more pessimistic about the chances of success, see AA Ref. III B3, Vermerk: OECD-Schutzkonvention, June 9, 1966. PA AA, B 56, Referat IIIB3, Abgabe 1200.

⁸⁶On Turkey's position, see OECD Doc. CES/65.72, 22 October 1965. OECD Archives, 213754. On Spain's position, see OECD Doc. CE/M (67) 3 (Prov.), March 7, 1967. *Ibid.*

Although APPI members were clearly able to exercise substantial instrumental power by getting a multilateral investment treaty on the agenda of the OECD and by influencing the negotiations, the case did end without final success. There are a few reasons for the failure: the initial political opposition by the United States, which only adopted a more positive attitude towards the draft in 1963 as well as the fact that some developing country members of the OECD (Greece and Turkey in particular) also doubted the feasibility of this instrument.⁸⁷ Here, APPI might have overestimated the degree of homogeneity amongst the member states of their preferred forum. Then again, it had not invested in either of these countries either: there was neither a Greek nor a Turkish director in APPI during the 1960s, making it more difficult to exercise the kind of instrumental power its members achieved in Germany, the United Kingdom, or France. Although the OECD Secretariat still referred persons interested in more information about the OECD Draft Convention to APPI until the end of the 1970s, there are no traces in APPI's archival records that it took any further initiatives towards the OECD after 1967.⁸⁸

Friends, not allies: APPI and the World Bank

Like the OECD, APPI perceived the World Bank as a potential ally and an essential player in the quest for a better international investment protection regime. Liaising with the Bank instead of other organizations was particularly appealing for APPI for a few reasons. Like the UN, the World Bank had a broad membership. However, the industrialized countries retained a more dominant position at the World Bank after decolonization in the 1960s. This meant that the Bank's policymakers had to consider this key constituency when making proposals. Important communist countries such as the Soviet Union, Poland, and Czechoslovakia had either not joined or left the Bank in the 1950s, and capitalist Europe and North America still held 61% of the voting rights in 1971.⁸⁹ Evidently, the convictions and actions of World Bank policies are never politically neutral.⁹⁰ Some APPI members also realized that initiatives by the World Bank, "an institution commanding the greatest respect and having wide influence among the developing countries," would probably be looked as less suspiciously than private initiatives might.⁹¹ Finally, there were solid personal connections between the Bank's leadership and APPI. For example, the aforementioned "Declaration Black" that had called for an investors council was inspired by Leo Welch of Standard Oil, an APPI member.⁹² Likewise, Arthur Dean, another APPI member, served as best man to the wedding of Black's successor, George Woods, who was World Bank President from 1963 to 1968.⁹³

The Bank brought to life two of the three multilateral proposals for which APPI advocated. In 1965, a multilateral convention issued by the Bank established ICSID, creating a new machinery to settle disputes between investors and states. In 1988, the Bank set up the Multilateral Investment Guarantee Agency (MIGA). APPI members also believed that the World Bank possessed some leverage to nudge its borrowers into adopting policies as a condition for loans. As this section shows, APPI was less capable of exercising instrumental power at the World Bank. At the same time, it possibly played a larger role in setting the World Bank's agenda on investment protection. Whereas the archival records show that APPI was of little importance what concerned investment guarantees, and unsuccessful in convincing the Bank to adopt changes to its loan policy, some materials suggest that APPI might have planted the seeds of what would become ICSID in the minds of policymakers at the Bank.

⁸⁷Batselé (2023).

⁸⁸See for example Letter from OECD Secretariat to J. Freedman, 5 July 1979. OECD Archives, 213754.

⁸⁹Mason and Asher (1973: 63–66).

⁹⁰Hayter (1971), Oliver (1995) and Sayward (2006).

⁹¹Letter from Lord Shawcross to Arthur Dean, January 19, 1962. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

⁹²APPI—Public Relations, Paper prepared by Leo Welch, director of Standard Oil Company (New Jersey) and used in part by Eugene Black of IBRD, undated (presumably 1958 or 1959). TEA, 50ZZ572/-19.

⁹³Oliver (1995: 32).

This case study is also an illuminating example of IO-business liaison in the absence of any formal rules. Unlike the OECD or the UN, the Bank's foundational documents did not clarify the relationship between the Bank and non-state actors. Only in 1982 did the Bank adopt a formal policy on its relationship with NGOs when it created an NGO-World Bank Committee.⁹⁴ But the absence of rules does not mean the Bank remained disengaged from private business: the archival record shows that APPI members had direct access to senior World Bank staff.

APPI and the bank's legal proposals

According to a World Bank study, at least twelve proposals for an international investment insurance agency existed in the late 1950s.⁹⁵ Within APPI, the idea was a project of Jean Reyre, Managing Director of the Banque de Paris et des Pays-Bas (today BNP Paribas) and some APPI members privately opposed this work.⁹⁶ Nevertheless, APPI studied the main contemporary proposals and drafted a report that was sent to the ICC and the World Bank in 1961.

The Bank published a report in 1962 listing the different proposals, without any reference to how such a system could be implemented.⁹⁷ In the following years, despite some hesitation, the Bank continued to study the subject of investment insurance. In over 60 meetings, it produced three sets of draft articles on creating an International Investment Insurance Agency (IIIA) in 1966, 1968, and 1972. There was only lackluster support amongst the Bank's members, partially because some states had developed national investment insurance mechanisms by then, and partially because of disagreements on the legal specifics of the scheme.⁹⁸ Because of this, it would take almost two more decades until the World Bank eventually implemented such a scheme, establishing MIGA in April 1988.

On APPI's side, the archival record is somewhat sketchy. One thing is clear: even though it had set up a working committee in 1961, APPI never drafted a proposal but let its committee comment on the World Bank's different proposals. Initially, this was done to ensure cordial relations with the ICC, which had made it clear in years past that it saw itself as the privileged interlocutor of business interests on this subject. APPI's members also had good access to the Bank's staff. Internal Bank memos, for example, referred to a meeting between APPI lawyers and the Bank's Development Services Department.⁹⁹ More often, APPI provided written comments to the Bank. For instance, in 1967, APPI commented on the first set of IIIA draft articles, stressing the importance of substantive law (a link to the OECD Convention), including a broad definition of investments, and loss-sharing agreements so that developing countries would also pay their share.¹⁰⁰ It reiterated this stance several times in the following years, urging the World Bank to continue its work "notwithstanding the present hesitancy on the part of some capital-exporting countries."¹⁰¹ In its last set of IIIA draft articles published in 1972, the Bank did make some concessions to investors by including a loss-sharing mechanism and a direct link to investor-state arbitration.¹⁰² However, based on the available archival record, one can hardly establish a direct link between APPI's comments and these concessions. What is more, after circulating the draft amongst its members, the Bank let the issue rest until 1981, when a new management revived it.¹⁰³

⁹⁴Shihata (1992).

⁹⁵International Bank for Reconstruction and Development (1962).

⁹⁶APPI, Meeting of the Steering Committee, Friday 18 December 1959, Summary Record. TEA, 21V00621-2.

⁹⁷International Bank for Reconstruction and Development (1962) and Shihata (1987: 110–14).

⁹⁸Shihata (1988: 45).

⁹⁹David Gordon to George Woods, Meeting with APPI Representatives on Investment Guarantees, October 4, 1965. World Bank Group Archives, Liaison—20 Association internationale pour la promotion et la protection des investissements privés en territoires étrangers [APPI]—Volume 01, 30023905, WB IBRD/IDA EXT-08.

¹⁰⁰APPI Doc. 295/67, Memorandum containing the Comments of the APPI on the draft Articles of Agreement of the International Investment Insurance Agency dated 30 November 1966, March 21, 1967. DBA, V01/4411.

¹⁰¹Letter from Eberhard Reinhardt to Robert S. McNamara, President, International Bank for Reconstruction and Development, September 26, 1969. DBA, V01/4413.

¹⁰²Shihata (1987: 114).

¹⁰³Shihata (1987: 125).

Regarding investor-state arbitration, a few more traces point to influence of business interests in the creation of ICSID. The World Bank decided to get active in 1961 and dates the commencement of works to August of that year, when its then General Counsel Aron Broches prepared an internal memo on the topic.¹⁰⁴ He submitted a first draft convention in June 1962, and a second in summer 1963 to the Bank's executive directors. After consultation with member countries in four regional meetings, he presented the final text in early 1965 to members for ratification; ICSID came into force in 1966 with the signature of the twentieth country.

As with the investment insurance agency, when the World Bank started working on investor-state arbitration, some proposals were already circulating. For instance, in 1960, APPI set up a working committee on arbitration, drafting its own proposed convention.¹⁰⁵ APPI sent this draft to the World Bank roughly a month before the World Bank published its first draft convention.¹⁰⁶ Recent literature notes that this does not discount a possible larger role for private business. The American Bar Association (ABA) prepared its own proposal on arbitration of investment disputes in 1961, which seems to have inspired Broches substantially.¹⁰⁷ Four of the seven drafters of the ABA proposal were affiliated with Royal Dutch Shell, one of APPI's principal backers. Curiously, this draft is not discussed in APPI materials we accessed, which prompted Batselé, who compared the text of the various legal proposals, to opine that Shell acted outside of APPI on this initiative.¹⁰⁸ This hints that an individual company like Shell also “forum shopped” between associations, seemingly deeming a bar association better placed than a business interest association to pursue this specific goal.

The sources we consulted cannot directly confirm nor disprove the thesis that the World Bank's staff might have decided to move on investor-state arbitration because APPI and Shell asked for it. World Bank archival records indicate that, already in 1960, business interests, including the ICC, were active demandeurs for new institutional arrangements on settling investment disputes, because they believed that some states would never agree to dispute settlement before the ICC Court of Arbitration. At that consultation, the Bank—represented by one of its lawyers, Georges Delaume—did not yet take the bait to become the institution supporting such arrangements, noting that it had more experience in conciliation rather than arbitration.¹⁰⁹ Still, a few months later, the Bank would start working on precisely the topic of investor-state arbitration. Although these early records do not refer to APPI, they contain several references to communications with the ABA, including with one of the Shell lawyers who was active in APPI, G.W. Haight. Unfortunately, almost all the specific memos on this ABA proposal have not been made available by the Bank, which has removed some of these records based on the exceptions to its Access to Information policy.¹¹⁰

Another piece of evidence seems to downplay the importance of private business in this initiative. In 1965, the British Conservative Member of Parliament Eldon Griffiths sent a position paper entitled *Manifesto for Foreign Investors*, which he had published in several newspapers to Lord Shawcross. In the article, he claimed that APPI “originated the idea of [the ICSID Convention].” In his comments to Griffiths, Shawcross noted that whereas he had had many talks with then World Bank president Black and hoped that this “contributed to the result,” “it is not really correct to say that APPI originated this.

¹⁰⁴International Centre for Settlement of Investment Disputes (1968: 1–2).

¹⁰⁵Circular by the Vereinigung schweizerischer Industrieholdinggesellschaften to its member companies, annexed with the APPI's first Annual Report (1958–1961), June 24, 1961. Swiss Federal Archives (hereafter: BAR), C.41.124.1.

¹⁰⁶APPI European Bulletin for November 1963, 4th Series No. 11, December 1, 1963. BAR, C.41.124.1.

¹⁰⁷St John (2018: 132) and Boue (2022).

¹⁰⁸Batselé (2023).

¹⁰⁹Report Prepared by Roberta M. Lusardi (IHQ) on United Nations/ICC Arbitration Consultation held in the Conference Room of Mr. Philippe de Seynes, United Nations Under-Secretary, on 24 September at United Nations Headquarters at 10 a.m., September 26, 1960. World Bank Group Archives, Operational—Arbitration—Settlement of Investment Disputes [SID]—Correspondence—Volume 1, 30354834, WB IBRD/IDA ADMCF-04.

¹¹⁰See in particular World Bank Group Archives, Operational—Arbitration—General—Correspondence—Volume 1, 1070931, WB IBRD/IDA ADMCF-04, which contains several record removal notices related to the ABA Draft, communications between some of the World Bank lawyers working on the legal proposals, etc.

The idea was first publicly put out by Eugene Black [. . .] I think the credit goes to him.”¹¹¹ Barring the discovery of new archival sources at Shell, the ABA, or elsewhere, it seems difficult to find the “smoking gun” that could show whether business interests were the key player in setting the World Bank’s agenda on investor-state dispute settlement.

A few years after the ICSID Convention had been negotiated, Shell lawyers still strongly supported it. At the same time, these lawyers did not believe APPI itself should push for more countries to join the convention, as the Bank might find open support from a businessmen’s club like APPI “more of a liability than an asset.”¹¹² This statement suggests that once an IO had successfully taken over APPI’s preferred policy agenda, the organization was happy to let the IO come to the fore to propagate the proposal amongst its membership. To us, it seems possible that Shawcross purportedly undersold his role in the ICSID Convention’s creation for the greater good, as he and his team did not believe that the Convention was served by creating the impression it was pushed for by private business.

Against this background, recent scholarship has put a question mark behind St John’s claim that “corporations and law firms that dominate investor-state arbitration today were not present” at the creation of ICSID, a statement she has nuanced since.¹¹³ The thesis of indirect business involvement is supported by the fact that officials of developing countries explicitly told APPI that their governments might support the creation of an investor-state arbitration mechanism if this happened under the auspices of an IO in which their countries would have confidence, such as the World Bank.¹¹⁴ It thus made sense for investors to take a step back and let an ostensibly more neutral institution like the World Bank take over the project. APPI was clearly pleased with the entry into force of the ICSID Convention. In 1969, the Directing Committee looked back at APPI’s ten years of existence, singling out this event as the organization’s “most spectacular achievement.”¹¹⁵

APPI and the World Bank’s loan policy

Besides the Bank’s legal proposals, APPI also engaged in discussions with the Bank on its loan policy. In particular, the Bank’s Policy Memorandum 204 outlined criteria under which the Bank would withhold lending, which included the nationalization of foreign-held assets without adequate compensation or disregarding agreements with foreign private investors.¹¹⁶

During the 1960s, APPI increasingly pressured national governments to condition whatever form of financial assistance was given to developing countries on the fair treatment of private investments. APPI probably took this idea from the so-called Hickenlooper Amendments that the U.S. Senate and House passed in the early 1960s in response to expropriations in Cuba and Brazil. The amendments required the U.S. President to withhold any aid to a country that had expropriated American property without “speedy compensation for such property in convertible foreign exchange, equivalent to the full value thereof.”¹¹⁷ APPI documents show that it welcomed these amendments and sought to expand the principle to the World Bank. In the early 1970s, World Bank president Robert McNamara wanted the Bank to expand its lending portfolio considerably.¹¹⁸ In the eyes of APPI, this expansion resulted in a too-loose loan policy, with money lent to countries that should have been excluded as recipients because of detrimental private foreign investment policies.

¹¹¹Letter from Lord Shawcross to Eldon Griffiths, June 29, 1965. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

¹¹²Letter from John Blair to Michael Brandon, February 14, 1969. NL-HaNA, Stikker, 2.21.156, inv.nr 110.

¹¹³St John (2018: 2, 2022). See in particular (Perrone 2022; Boue 2022; Hafner 2022; Batsel  2023).

¹¹⁴Approaches to national delegations to the U.N. in Geneva, letter from Michael Brandon to Pierre Piffault, December 14, 1959. TEA, 50ZZ546/-27.

¹¹⁵APPI Doc. 20/69, Report on the Meeting of the APPI Directing Committee, 26 September 1969, New York, October 20, 1969. DBA, V01/4413.

¹¹⁶Hayter (1971).

¹¹⁷Vandeveldt (1988).

¹¹⁸Sharma (2017: 2).

The Directing Committee approached World Bank President McNamara directly, to convince him to adopt a different policy.¹¹⁹ APPI noted “with concern” that countries with apparently hostile policies towards private foreign investment continued to receive financial support from institutions such as the World Bank. In the eyes of APPI, the Bank’s policy had become so flexible that borrowers might be tempted to harm private foreign investors.¹²⁰

McNamara denied that the World Bank had deviated from its internal guidelines.¹²¹ The Bank would not lend to a country if it felt that the country’s position regarding the alien owners of expropriated property was “substantially affecting its international credit standing” and it would only lend again if there were “good grounds for believing that the obstacles to lending will soon be removed.”¹²² Disagreeing with McNamara’s initial reply, APPI and the Bank exchanged a flurry of letters and set up an in-person meeting with McNamara.¹²³ Many documents in the archival records consulted deal with this disagreement, arguably APPI’s main priority in the early 1970s.

The meeting took place in July 1972, with APPI investing considerable resources in its preparation. McNamara told the APPI representatives that he felt “constant and severe” pressure from member countries that they were entitled to loans, especially considering that other borrowers had no issues with their credit standing. He had tried to persuade governments and international banks to find a common attitude towards countries that expropriated without providing satisfactory compensation. However, McNamara had failed to obtain any result. In his concluding remarks, McNamara stated that he could not “fight this up-hill battle alone very much longer” and that he needed APPI’s support in harmonizing governments and investors’ attitudes.¹²⁴

Subsequently, the tone of the exchange between APPI and the World Bank changed. APPI members took McNamara at his word when he blamed member states, and APPI representatives went to their governments to push for a hard stance on loan policy.¹²⁵ Involving member states seems to have irked McNamara, who renounced his earlier appeal for APPI’s support and asked it to stop approaching government representatives.¹²⁶ From the tone in the subsequent letter sent to Abs, McNamara wanted to close this chapter, stating “it seems to me that they deal with matters as to which I have already expressed our views and I need not elaborate on them any further in this letter.”¹²⁷ Although both sides continued to correspond for some more months, APPI’s lobbying did not result in any concrete change in policy outcome despite its direct access to the World Bank presidency.

Possibly, McNamara had his own agenda in these discussions. In fact, during the early 1970s, the U.S. Congress rejected bills to replenish U.S. commitments to the World Bank for a while because of the majority of Congress’ belief that the Bank had been too lenient in providing loans to countries expropriating foreign investment without adequate compensation.¹²⁸ Perhaps McNamara wanted to resist attempts by governments to have a bigger say in the Bank’s lending policy, which would explain his irritation when APPI tried to move the debate to the Bank’s membership. In any case, the example illustrates the strengths and weaknesses of business influence on IOs. The Bank seems to have been more willing to co-opt APPI’s agenda on matters that could make the Bank itself grow—such as by

¹¹⁹APPI Doc. 52/70, Report on the Meeting of the APPI Directing Committee, 17 September 1970, Copenhagen, November 10, 1970. DBA, V01/4414.

¹²⁰Letter from Eberhard Reinhardt to Robert S. McNamara, August 11, 1971. DBA, V01/4414.

¹²¹Letter from Mr. Robert S. McNamara to Dr. E. Reinhardt, September 9, 1971. DBA, V01/4414.

¹²²Policy of World Bank Group towards Disputes over Expropriation (Attachment to letter dated 9 September 1971, Letter from Mr. Robert S. McNamara, President of the International Bank for Reconstruction and Development to Dr. E. Reinhardt), September 9, 1971. DBA, V01/4414.

¹²³Letter from Eberhard Reinhardt to Robert S. McNamara, February 21, 1972. DBA, V01/4414.

¹²⁴Confidential Note on the APPI’s appointment with Mr. McNamara on July 15, 1972, in Washington D.C., undated. DBA, V01/4415.

¹²⁵For example in the United Kingdom, see The National Archives, FCO 59/941 and in the Netherlands, see NL-HaNa, Buitenlandse Zaken_Code-Archief 1965-1974, 2.05.313, inv.nr 7566, both of which refer to talks between APPI members and the respective Ministries of Foreign Affairs on this issue.

¹²⁶Letter from Robert S. McNamara to Mr. E. Reinhardt, December 13, 1972. DBA, V01/4416.

¹²⁷Letter from Robert S. McNamara to Dr. Hermann J. Abs, March 9, 1973. DBA, V01/4416.

¹²⁸Sharma (2013).

creating new entities at the Bank to deal with investment guarantees or dispute settlement—and less eager to be directly told by businessmen how they should exercise their competences, as the example of the Bank’s lending policy shows.

APPI and the United Nations: preaching, rather than drafting, the investor’s gospel

APPI’s relationship with the United Nations was ambiguous. On the one hand, it viewed the UN General Assembly as an important forum—so much so, that it dedicated many pages of the so-called *American Bulletin*, a newsletter for APPI members, to the deliberations of UN member states on foreign investment. APPI sought to closely follow such debates, i.e. by obtaining observer status with the UN Economic and Social Council (ECOSOC). Furthermore, APPI sometimes managed to get its views represented in reports produced by UN bodies. On the other hand, APPI generally remained suspicious of the UN because it deemed it a forum more critical of protecting foreign investor rights, where Western states did not have a voting majority. Still, APPI strived for and eventually gained consultative status with the UN in the 1960s.

Overall, APPI’s involvement with the UN was mainly one of providing expertise to the Secretariat, for example, by participating in studies on private foreign investment.¹²⁹ Its most visible role was its involvement in the organization of so-called panels on foreign investment in Amsterdam in 1969 and Medellín in 1970, a little-known episode seen as an important moment in the UN’s relationship with international business.¹³⁰ Rather than trying to convince the institution to adopt specific policies, APPI was generally more reactive in its engagement with the UN, primarily influencing the UN’s discourse on foreign investment to make UN reports adopt a more investor-friendly tone.¹³¹ In this regard, Nicolàs Perrone has used the term “legal imagination” to make the broader argument that businessmen and their legal experts succeeded in spreading a “particular meta-language of international investment law that is still influential today.”¹³²

One reason why APPI viewed the UN with suspicion was the ill-fated 1949 International Code of Fair Treatment for Foreign Investments. This document was the ICC’s attempt at creating a multilateral investment convention, drafted mostly by Michael Heilperin, a prominent Austrian School of Economics thinker, and submitted to ECOSOC members for their consideration.¹³³ However, the ICC hardly made a splash with its proposal. It was never seriously discussed within the UN, and the ICC’s calls for a conference on the matter went unheeded.

This failure influenced APPI’s views on the UN. Shawcross recommended to keep discussions on a multilateral investment treaty away from the UN, for example.¹³⁴ Abs, too, believed that the UN was an inconvenient forum. He feared that UN bodies would adopt decisions detrimental to private capital interests, due to the addition of states that “belong either to the Eastern bloc or to underdeveloped countries which, for nationalistic or other reasons, are not in a position to provide sufficient assurances to the foreign investor [. . .].” Similarly, Abs and other APPI members urged representatives of their governments to stall 1958 discussions on investment protection at the ECOSOC’s meeting by delegating the question to a subcommittee, avoiding any binding decisions. This would then buy time for the capital-exporting countries to sponsor a convention more in line with their needs in a more

¹²⁹APPI Doc. 136/65, Request from the United Nations Secretariat for statements of investors’ aims and attitudes, February 22, 1965. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 63.

¹³⁰Dell (1990: 56–62).

¹³¹Circular by the Vereinigung schweizerischer Industrieholdinggesellschaften to its member companies, annexed with the APPI’s first Annual Report (1958–1961), June 24, 1961. BAR, C.41.124.1.

¹³²Perrone (2021: 3).

¹³³The text of this code can be found in International Chamber of Commerce, ICC Brochure 129: Fair Treatment for Foreign Investments—International Code (ICC, 1949). Also see Slobodian (2018: 121–45).

¹³⁴Letter from Lord Shawcross to Douglas Dillon, October 8, 1958. TEA, 50ZZ546-24.

favorable forum, the OECD.¹³⁵ This episode reminds us of what has been called “power with”: APPI worked together with representatives of Western governments to achieve its goals.¹³⁶

Nonetheless, APPI’s first annual report states that the association had maintained “cordial working relations” with the UN Secretariat since its inception.¹³⁷ This *inter alia* referred to talks between UN civil servants and Lord Shawcross, who persuaded UN staff working on a report on private foreign investment of the potential importance of investor-state arbitration, prompting them to include several references.¹³⁸ The final report by the UN, published in early 1960, in fact devoted an entire chapter to measures for protecting foreign investment. It described the different approaches in detail and largely followed the arguments put forward by investors and capital-exporting countries, much to the satisfaction of APPI. By taking for granted the positive impact of foreign investment on economic development, the report adopted language preferred by investors, speaking of *protection* rather than permanent sovereignty over natural resources or *obligations* of investors. Stressing the importance attached by investors to instruments such as arbitration, it only mentioned in passing that this was a “field in which the rules of international law are still in dispute between groups of countries.”¹³⁹ We interpret this report as an instance where APPI exercised considerable discursive power. Even though APPI had not been involved in the UN’s initial decision to write the report, the UN reached out to hear what foreign investors’ policy preferences were, and APPI influenced the framing of what was relevant when discussing foreign investment (namely: protection), which could in turn influence the readership of the report, above all UN member states.¹⁴⁰

Despite APPI members’ initial skepticism vis-à-vis the UN’s role in private foreign investment, practical necessities nuanced this view over time. By the mid-1960s, APPI’s lobbying campaign in favor of specific legal instruments had almost run its course, and the attention started turning to other problems of private foreign direct investment (FDI).¹⁴¹ With the ever-increasing number of developing countries entering the UN’s general assembly, a discourse on economic development emerged there, eventually leading to the creation of UNCTAD with a mandate to promote economic development and trade through international cooperation.¹⁴²

Because APPI members wanted to stay abreast of developments at UNCTAD and other UN organs, the Directing Committee decided in 1964 to seek consultative status with ECOSOC.¹⁴³ APPI’s application was successful, allowing it to (in president Reinhardt’s words) “put the investor’s viewpoint more effectively and forcefully” at the UN.¹⁴⁴ A few years later, APPI was elevated from a Category C to a Category B observer, receiving more rights.¹⁴⁵ On the suggestion of the UN Secretariat itself, a dialog between representatives of the developing countries and foreign investors to discuss matters of common interest was established in 1968.¹⁴⁶ Although some APPI members initially opposed the panel approach out of fear that it could offer a forum to those developing countries (and UN officials) most

¹³⁵Letter from Hermann J. Abs to the Bundesminister des Auswärtigen, Herrn Dr. Heinrich von Brentano, July 12, 1958. DBA, V01/4403.

¹³⁶Rollings (2021: 906).

¹³⁷Circular by the Vereinigung schweizerischer Industrieholdinggesellschaften to its member companies, annexed with the APPI’s first Annual Report (1958–1961), June 24, 1961. BAR, C.41.124.1.

¹³⁸*Ibid.*

¹³⁹United Nations, General Assembly, *The promotion of the international flow of private capital: progress report by the Secretary-General*, E/3325 (February 26, 1960), available online at <https://digitallibrary.un.org/record/760540?ln=en>.

¹⁴⁰Fuchs and Lennartz (2021: 26).

¹⁴¹Letter from Julie Esrey to Leo Haider (Standard Oil), Major items for consideration at November 10 meeting of APPI’s Directing Committee, November 2, 1967. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 65.

¹⁴²United Nations (1985: 11).

¹⁴³APPI Doc. 14/64, Meeting of the Directing Committee in Vienna, Monday, 22 June 1964, July 1, 1964. Arthur H. Dean papers, #4100. Division of Rare and Manuscript Collections, Cornell University Library, Box 63.

¹⁴⁴APPI Doc. 24/66 Meeting of the Directing Committee in Montreal, Thursday 22 September 1966, October 10, 1966. DBA, V01/4411.

¹⁴⁵APPI Doc. 235/69, APPI’s new consultative status with the UN Economic and Social Council (ECOSOC), March 26, 1969. DBA, V01/4413.

¹⁴⁶ECOSOC Resolution 1286 (XLIII), available at <https://digitallibrary.un.org/record/214249?ln=en>.

critical of private FDI, another view eventually carried the day.¹⁴⁷ Investors believed that a direct dialogue between them and host states, without their home state that might be looked suspicious at by the developing countries, could help investors press their views in favor of an attractive private FDI climate.¹⁴⁸ Panel members talked for five days and adopted a largely uncontroversial Agreed Statement on Private Foreign Investment in the Development Process.¹⁴⁹ The panel approach, mostly evaluated as a success by APPI members, was continued by convening other panels in subsequent years (in Medellin, Tokyo, and Caracas). It is difficult to assess the direct impact of these panels, as they were different from lobbying for specific legal proposals. However, the opinion of APPI Directors was that “whilst no direct results could be expected from meetings of this kind they were undoubtedly extremely important.”¹⁵⁰

Conclusion

Recent research has improved our understanding of transnational BIA’s contribution to global governance in the 20th century. Whereas scholars now increasingly recognize the importance of this private diplomacy, the number of case studies, especially those that look beyond peak transnational business associations, remains small. Likewise, the interactions between private business actors and international organizations are often assumed but less frequently empirically detailed. This article has shown how even a little-known BIA, the APPI, enjoyed a close working relationship with the United Nations, World Bank, and OECD on private foreign investment during the period 1958-1974. A few points are worth mentioning.

First, the case broadens our knowledge about forum shopping, both at the level of IOs and concerning the interaction between various types of BIAs. As regards the former, we found that business actors adopted a combination of pragmatic and ideologically driven motivations when approaching IOs. Our research shows that APPI preferred to use the OECD and the World Bank as institutional fora over the United Nations when dealing with specific legal projects. At the same time, one should not overestimate these differences: APPI’s approaches to IOs come across as decidedly pragmatic, and even when an organization deemed not particularly close to foreign investors, such as the UN and its Secretariat, worked on foreign investment, APPI decided to engage. APPI’s own creation can best be explained as a type of forum shopping between BIAs, as a small constituency of mainly oil and banking corporations believed that investor protection, one of their fundamental interests, was not adequately dealt with by a peak association, in this case, the ICC. Our research indicates that even individual multinationals, such as Shell, seem to have consciously considered the benefits of working through various types of BIAs, whereby the relatively bureaucracy-heavy nature of some peak associations—such as the ICC—sometimes lost out against the benefits of ad hoc alliances such as APPI. Future work can supplement our understanding of the relationship between peak and smaller BIAs, and companies’ preferences in other areas of global governance.

Secondly, Fuchs and Lederer’s framework has provided us with a helpful lens through which we could identify how APPI influenced IOs. As for instrumental power, APPI was sometimes able to convince both state actors and IOs to adopt a policy they would not have otherwise taken, as the example of the negotiation of the OECD Draft Convention shows. APPI’s advice was not heeded at other times, as the World Bank’s loan policy example illustrates. Still, its influence did not stop there. Although APPI had no formal status with the OECD or World Bank, and only received consultative status with the UN in 1964, it almost seemed baked into the system that organizations like APPI, and not necessarily other actors, had to be consulted. This consultation could happen via contacts with IO

¹⁴⁷Letter from Michael Brandon to John Blair, Views on promoting the idea of a UN or UNCTAD panel or “dialogue” on private foreign investment, December 29, 1967. NL-HaNA, Stikker, 2.21.156, inv.nr 296. Brandon feared that several members of UN staff unfriendly to FDI would dominate the preparation process (describing Sidney Dell, then technically responsible for foreign investment matters at UNCTAD’s New York Liaison Office and later Executive Director of the United Nations Centre for Transnational Corporations, as “an extreme left-winger”).

¹⁴⁸Letter from John Blair to Hugo Lindgren, April 4, 1968. NL-HaNA, Stikker, 2.21.156, inv.nr 296.

¹⁴⁹The final report of the panel can be found in NL-HaNA, Stikker, 2.21.156, inv.nr 304.

¹⁵⁰APPI Doc. 7/69 Meeting of the Directing Committee in Vienna, Friday 9 May 1969, May 22, 1969. DBA, V01/4413.

secretariats, home states, or using other representative business organizations (e.g. BIAC for the OECD). This way, APPI had structural power in agenda setting. In this, APPI seems to have been helped primarily by the personal relations that some of its key members enjoyed with high-level politicians and bureaucrats, illustrating how the three faces of power should not only be seen in isolation but can also complement and strengthen each other. Finally, APPI members also exercised discursive power by shaping the terms of the debate on foreign investment, for example, through its advocacy at the UN. APPI skillfully linked the protection of private foreign investment to the omnipresent discourse of development. This restricted what was imaginable and possible since the discourse around economic growth was already framed in the terms preferred by investors—by actors like the APPI. APPI was very conscious about its legitimacy as a political actor and strategically chose to remain in the background when it feared that a public involvement might be counterproductive, as in the case of investor-state arbitration. What is more, rather than just “power over,” APPI also exercised “power with” like-minded governments, for example, when APPI succeeded in stalling discussions on investment protection at ECOSOC thanks to the intervention of allied governments.

Finally, we believe our article illustrates the promises of more archival research into business influence in IOs and policy processes by business historians, lawyers, and international relations specialists. The many thousand pages of records that APPI left behind at various business archives testify that top businessmen of the time considered it worthwhile to try and influence policy processes at IOs. APPI was not unique as a BIA that attempted to influence investment policy. Indeed, the archival collections that we consulted also contain extensive materials on national affiliates of the APPI, for instance on the Gesellschaft zur Förderung des Schutzes von Auslandsinvestitionen e.V. in Germany, or on the Association de droit minier et pétrolier in France. Likewise, similar lesser-known BIAs, national and transnational, have likely existed—or still exist—in other policy areas such as taxation, intellectual property protection, or trade. Historians and social scientists still have much to uncover about how global corporations, businessmen, and their BIAs navigated and shaped the complex world of global economic governance.

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