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Predictability Versus Flexibility: Secrecy in International Investment Arbitration

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Abstract:

There is heated debate over the wisdom and impact of secrecy in international negotiations. This debate has become central to the process of foreign investment arbitration because parties to dispute nearly always can choose to hide arbitral outcomes from public view. Working with a new database of disputes at the world's largest investor-state arbitral institution, this paper examines the incentives of firms and governments to keep the details of their disputes secret. We argue that secrecy in the context of investment arbitration works like a flexibility enhancing device, similar to the way escape clauses work in the context of international trade. To attract and preserve investment, governments make contractual promises to submit to binding arbitration in the event of a dispute, but these promises can be difficult to honor strictly—especially in disputes where strong

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political pressures lead governments to violate legal norms. Investors, too, favor secrecy when managing politically sensitive disputes over assets that they will continue to own and manage in host countries long after the particular dispute has passed. While secret outcomes help facilitate politically difficult bargaining, it diminishes one of the central purposes of arbitration: to allow governments to signal publicly their commitment to investor-friendly policies. By explaining secrecy, we suggest it may prove easier in future work to explain more accurately the observed patterns of wins and losses from investor-state arbitration as well as perhaps patterns in investment

There is long-standing debate over the appeal of publicly transparent international institutions. The shared provision of information, it is thought, helps to set norms and stabilize expectations around which actors can organize complex and politically challenging domestic policies.¹ It can encourage participation and accountability and lend legitimacy to governance institutions.² Information can tie hands by raising the cost of reneging on agreements, a logic that is central to most theories that explain how international institutions facilitate the creation of credible commitments.³ These logics help explain why most international tribunals on boundary disputes are required to rule publicly when they settle zero sum matters such as shifting borders—decisions that would be nearly impossible for governments to implement without credible, visible external pressure.⁴ They also explain why all WTO dispute panel decisions are publicly released, partly on the logic that countries will find it easier to make domestic policy adjustments after their hands are publicly tied.⁵ Yet ‘open door’ negotiations, as well, can create strong incentives for parties to posture in public.⁶ Publicity can raise transaction costs and impede

¹ Keohane 1982; 1984.

² Buchanan and Keohane 2006; Keohane 1998.

³ Fearon 1997.

⁴ Allee and Huth 2006.

⁵ Davis 2012; WTO 2014.

⁶ Stasavage 2004.

negotiations needed to resolve entrenched disputes.⁷ It can also make it harder to hide and manage the fallout of inconvenient decisions.⁸

Nowhere is this debate over the function of public information within international institutions more heated or economically consequential than over the regulation of foreign investment that now totals nearly 1.5 trillion (U.S.) dollars a year in capital flows.⁹ Firms that invest overseas fear that obsolescing bargains and time inconsistency problems will put their investments at risk of expropriation or other harmful treatment in the hands of host governments.¹⁰ To mitigate this fear—and attract FDI—governments have created an expansive legal regime designed to boost investor confidence and create a more predictable environment for investors.¹¹ The keystone to that regime is binding independent arbitration that provides direct access to an international resolution that, in theory, depoliticizes the process and subjects decisions to objective legal criteria.¹² Nearly all of the existing bilateral investment treaties (BITs), along with some trade agreements (such as the North American Free Trade Agreement), thus allow private investors to invoke

⁷ Rabinovich-Einy 2002.

⁸ Kurizaki 2007; Levenotoglu and Tarar 2005.

⁹ For recent work on investment, see the *World Politics* special issue on the Global Economy, FDI and the Regime for Investment, ed., Milner 2014.

¹⁰ Tobin and Rose-Ackerman 2005; Tobin and Busch 2010; Bütte and Milner 2014.

¹¹ See Milner 2014. There is debate over whether investment treaties actually increase FDI. See Neumayer and Spess 2005; Tobin and Rose-Ackerman 2005; Bütte and Milner 2008.

¹² Norris and Metzidakis 2010.

arbitration by filing complaints when they feel wronged by a foreign host government. By most accounts, the promise of arbitration helps countries to credibly signal their commitment to investor-friendly policies.¹³ Because that regime is being replicated in major new trade and investment agreements, investor-state arbitration has assumed central importance in debates over the future of international economic institutions.

As a device for sending credible information about a country's commitment to protecting investors, most investment arbitration has the peculiar feature that the filing of disputes is public knowledge yet the official outcomes of negotiations and the final rulings need not be. In most disputes, any party can formally choose to hide the results of arbitration (known as the "award") from the public, including from other governments and investors. Indeed, in two-fifths of the 246 investment cases concluded by the beginning of 2012 at the World Bank's International Centre for Settlement of Investment Disputes (ICSID), the dominant investor-state arbitration mechanism, there is no official public record as to whether or why the government was found guilty of improperly harming the investor nor whether the investor was actually compensated. This concealment of information can be costly for the disputing parties and for the system of arbitration itself. It makes it difficult for other parties, including other potential investors, to determine whether the government actually honors its commitments. It reduces the predictability of the arbitration process and outcomes. And it prevents determination of whether the law is

¹³ See Büthe and Milner 2008; 2014; Haftel 2010; Neumayer and Spess 2005; Tobin and Busch 2010; Tobin and Rose-Ackerman 2011; Poulsen and Aisbett 2013; Simmons 2014. See Allee and Peinhardt 2014 for an alternative view.

being applied consistently and effectively.¹⁴ The risks associated with making investments thus rise, which can deter rather than attract FDI.¹⁵ As one arbitrator put it, “transparency generates certainty; ignorance panic”.¹⁶

Accompanying these costs is a wave of attempted reforms aimed at reducing the use of secret arbitration. Since the early 2000s, when arbitration over a series of publicly controversial investments began to tread into the domain of regulatory policy on issues such as environmental protection and access to water, there has been growing pressure from certain governments, the arbitral institutions themselves, and civil society for parties undergoing arbitration to make the full record public and thus further raise the costs of engaging in secret arbitration.¹⁷ Yet secrecy remains pervasive, diluting the broader public signal that arbitration provides a credible commitment to protect investor rights.

We argue that secrecy in the context of investment arbitration works like a flexibility enhancing device, similar to the way escape clauses work in the context of international trade.¹⁸ To attract and preserve investment, governments need to make commitments to provide investor-friendly policies, which they do by making contractual promises to submit to binding arbitration in the event of a dispute. Yet governments also

¹⁴ ICSID 2006c; Tahyar 1986.

¹⁵ Brown 2001.

¹⁶ Hernandez 2013, 27.

¹⁷ Parra 2012, ch 10.

¹⁸ Rosendorff and Milner 2001; Mansfield and Milner 2012; Milner, Rosendorff, and Mansfield 2011.

know at the time they make this commitment that political situations may arise that create incentives to undermine their promises. They also know that the credibility of their investment agreements will decline if they are seen to violate their commitments too frequently—investors will stop spending and other governments will stop signing investment agreements. Secrecy provides some measure of flexibility in precisely those situations where hiding information about their wrongdoing would be most immediately beneficial to the government.

Our starting point to identifying those situations, consistent with other work on bargaining,¹⁹ is the assumption that bargainers in a dispute care both about the substantive outcome of a particular bargain as well as the impact of the process on their public reputations.²⁰ Both affect how the parties assess their future investment strategies. As we will argue, secrecy can affect substantive outcomes by creating the flexibility to allow hard bargains that would otherwise be impossible—making it possible for investor and host country, alike, to prolong their relationship. Secrecy can also have an impact on how the process of arbitration affects reputations since secrecy allows governments to hide information about their wrongdoing that could undermine the credibility of their broader public commitment to investor rights more generally.

We see at least two broader implications of this argument of relevance for world politics. First, the decision to engage in secrecy may at once facilitate hard bargains and prevent posturing over politically sensitive disputes while also blunting the ability of

¹⁹ Stasavage 2004.

²⁰ While we draw upon Stasavage's assumption, our focus in this paper is different than his.

governments to signal their broader commitment to investor-friendly policies in precisely the most contentious cases. Second, the incentives for secrecy help explain why the public is least informed about those cases where the most is at stake—where investors and host governments do not want to be held publicly accountable for politically difficult decisions. Combined, these implications help explain why the legitimacy of investment-state arbitration remains highly controversial. Despite many efforts to promote transparency, we see no statistical evidence that those efforts have altered the underlying incentives for secrecy. These insights may also, we speculate, help explain the empirical finding that BITs do not always increase FDI.

The article proceeds to develop the argument in several steps. Several institutions handle the burgeoning caseload of investment disputes but ICSID—the empirical focus of this paper—has emerged as the dominant venue and accounts for more than 60% of all investor-state arbitrations.²¹ We begin by explaining the core features of the ICSID process that relate to the decision to conceal a case—that any party to arbitration can unilaterally demand secrecy, a decision that is made prior to the final ruling.²² Next, we develop our

²¹ There is no reliable universe of arbitrations and thus this fraction is based on the most reliable estimates from UNCTAD, which reports on treaty-based cases through 2011 (UNCTAD 2012). Recent discussions with practitioners has confirmed this number.

²² We model the choice for secrecy (which any party can make) rather than transparency (which requires the joint decision of all parties). We do this because secrecy is the outcome that most concerns ICSID, which has made public claims to the effect that secrecy is in decline, and also because the total number of cases limits our ability to precisely model the

theoretical arguments to explain when arbitration is most likely to be concealed, and then provide an account of the efforts to reform the ICSID process with the explicit goal of reducing the instances of secrecy over time. Empirically, we focus on the secrecy of arbitral outcomes—that is, the “awards” that are the final substantive decision from a panel of arbitrators—but we are mindful of similar debates over secrecy in proceedings, access for third parties, confidentiality of documents and related topics.²³ We focus on awards because they are the key outcome and have the greatest substantive importance for governments and investors alike. We then evaluate the observable implications of our argument on a new dataset we collected from all registered cases at ICSID from 1972 to 2011 (and the first 12 of 2012).²⁴ We offer a unique illustration of a case that was intended

strategic interaction between claimants and responding governments that would be essential to assessing transparency. However, we return to the question of transparency in the empirical analysis.

²³ E.g., Parra 2012; Kinnear, Obadia, and Gagain 2013; Waibel et al. 2010; Yackee and Wong 2010.

²⁴ For other efforts to collect data on arbitration see Caddel and Jensen 2014; Shultz and Dupont 2014; and Franck 2007. Caddel and Jensen are interested in which parts of a government are involved in investment disputes and have coded 163 of the 264 cases completed through the end of 2012. Franck looks at all public awards before 2006, the vast majority of which are ICSID-based. We extend these by making the claimant the unit of analysis, incorporating more home and host country features, including non-public cases in our analysis, and, where feasible, relying on leaked documents for information. Other work

by the parties to remain secret but was leaked, thus allowing us to observe what officially should have been unobservable. Finally, we conclude by considering some of the most important implications of this research.

ICSID in a nutshell

ICSID was created in 1966 as a forum within the World Bank where firms and individuals could resolve disputes with governments related to private investments. The architects of this institution allowed investors to bring cases directly to international arbitration, in some cases avoiding national courts that could be biased, slow, or even more expensive to use. It was created to address what was seen as a major challenge for economic development—the need to entice higher levels of private investment into developing countries by making arbitration more efficient and the awards more enforceable.²⁵ At the time, ICSID’s architects were less worried about whether or how ICSID cases would create precedent—or shape public opinion—and more concerned with protecting the interests of investors and states while expeditiously boosting the level of investment. Secrecy was seen as a way to facilitate bargains, and secrecy was the norm in commercial arbitration systems that were partial models for ICSID. While this foundation was laid in the late-1960s, as a practical matter, ICSID and other such institutions did little that relates to investment treaties, such as Elkins, Guzman, and Simmons 2006; Simmons 2014; Allee and Peinhardt 2010; 2011; 2014, take BITs as their dependent variable or primary independent variable.

²⁵ Parra 2012, 17.

until the seeds of economic globalization sprouted in the 1980s and investment soared. ICSID has gained the largest share of investor-state arbitrations because of its expertise, low transaction costs, and perceived efficiency.²⁶

Arbitration can be used for many types of disputes, but the most important in recent decades arises under BITs or the investment chapters in free trade agreements such as NAFTA or the Central America Free Trade Agreement (CAFTA). Since the mid-1980s essentially all “modern” BITs have included a resort to binding treaty-based dispute settlement such as at ICSID.²⁷

There are four kinds of actors who play central roles in investor-state arbitration—claimants, respondents, arbitrators, and the ICSID secretariat. Claimants are investors (individuals or firms). They launch arbitrations with the primary goal of receiving compensation for a lost or degraded investment or of hastening a settlement with the accused government. Since many claimants invest in multiple countries they also care about reputation in the other places where they do business. Respondents are the accused governments that host foreign investors. Their interest is not just to limit monetary damages but—usually—also to create a reputation for winning in order to deter future arbitration. A good reputation can also encourage future FDI.²⁸ Third are the arbitrators, almost always three per panel. Most decisions follow the majority of the arbitrators and

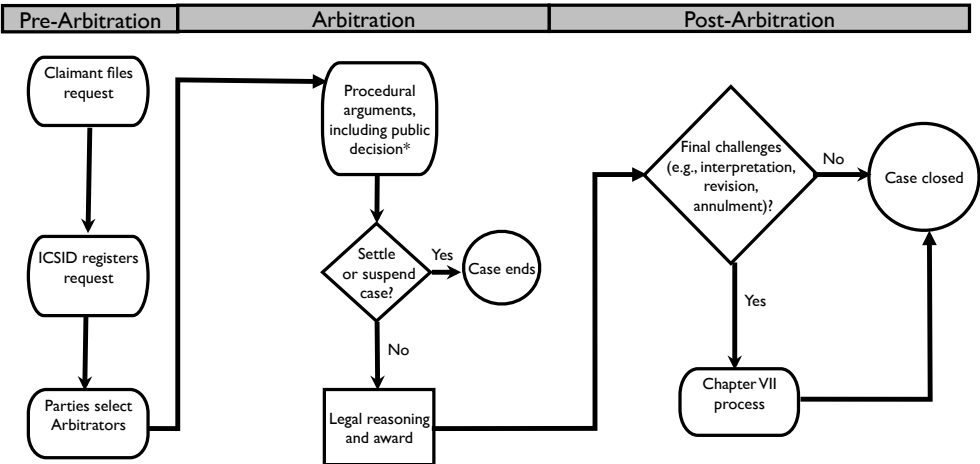
²⁶ Allee and Peinhardt 2014; Parra 2012; Puig 2013.

²⁷ See Poulsen and Aisbett 2013. See Büthe and Milner 2014 for a discussion of dispute settlement in preferential trade agreements.

²⁸ Büthe and Milner 2008; 2014; Haftel 2010; Jensen 2003.

thus in our coding, which we describe in detail in the empirical discussion, we assign “wins” and “losses” by looking to the majority. Fourth is the ICSID secretariat itself, which manages the process and provides assistance in the constitution of the arbitral tribunals and supports their operations. The secretariat also proposes and implements major reforms to the arbitration process and administers the proceedings and finances of each case.

Figure 1: Overview of ICSID Case Process



*Decision on secrecy of award made here

This paper focuses on the central outcome of arbitration—the issuance of an award.²⁹ Figure 1 illustrates the process, which begins when a claimant registers the dispute with ICSID. Hearings begin with an array of procedural matters, including decisions to keep the outcome secret. By “secret” we mean that the full final award of the arbitral panel is not officially released—either through ICSID or through other official sources with the consent of the parties. Under ICSID arbitration proceedings, secrecy can be obtained in two fashions. First, if a tribunal is allowed to proceed fully to the issuance of an arbitral award, one of the parties to the dispute may decide to withhold consent for publication. Unless the instrument that grants jurisdiction to ICSID speaks to this matter, the parties have the discretion to determine whether to disclose rulings—a choice typically made at the first meeting with the tribunal. The second way to secrecy is to terminate a case through settlement.³⁰ In our analysis, a settlement is considered “secret” unless the details

²⁹ There are important processes that can extend beyond the initial award that are beyond the scope of the present paper. Notably, if the respondent disagrees with the panel’s decision, it can file for an annulment—leading to the constitution of a new panel. For purposes of the present analysis, for the few cases in which an annulment phase is ongoing the case is coded based on the existing award. A small portion (16%) of cases undergo further annulment proceedings (rarely successful); see Simmons 2014.

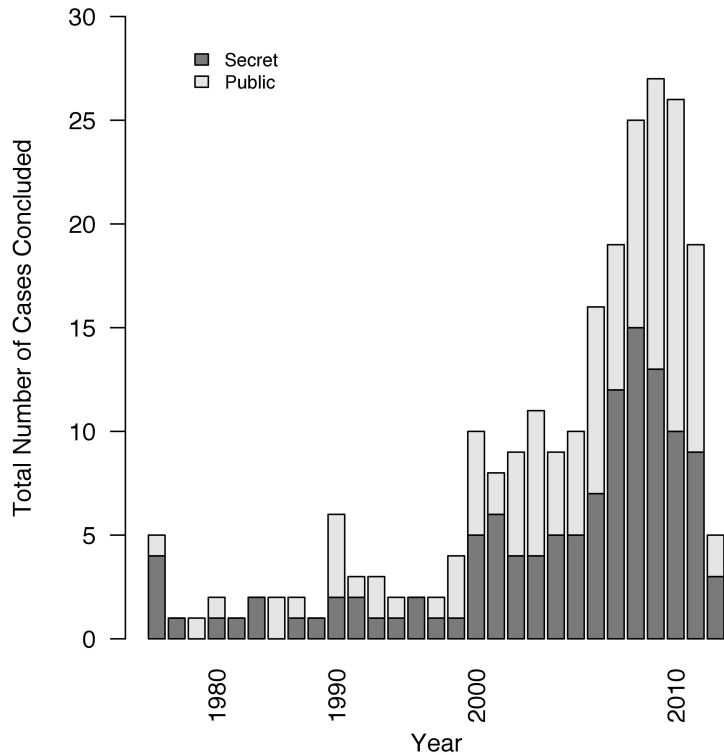
³⁰ As a procedural matter, what we call settlement can arise in three distinct ways: first, the parties agree to an actual resolution of the dispute; second, the parties agree to discontinue the proceeding without a formal settlement; and, third, one party to the dispute requests that the case be discontinued and there is no objection from the other party.

of the settlement, analogous to the substantive outcome of an award, are made public. The majority (64%) of secret cases in our sample are settlements; of those—a finding similar to other studies in the field (e.g., Schultz and Dupont 2014)—only 6% were ever made fully public. Officially, a case whose award is leaked is “secret” as well.

Crucially for our analysis is that even in secret cases ICSID will at least release the names of the parties and the arbitrators as well as other procedural milestones such as decisions on jurisdiction and whether an arbitration is settled or terminated through some other means. During the early procedures, before the outcome is known, either party to the arbitration can unilaterally and privately demand secrecy (see figure 2).³¹ Once a case is designated secret, the parties to disputes are required to keep the outcome confidential. The initial choice for secrecy is binding by practice and enforced through the relatively small cadre of arbitration professionals. This norm appears robust: over the course of ICSID’s history, only a small handful of secret cases have ever been fully leaked—a topic to which we return later in this article with the case study. It is puzzling—and a topic for future research—why there is not more leaking of arbitral awards when parties may have incentives to do so.

³¹ See, e.g., Rule 20 of the ICSID Arbitration rules (ICSID 2006a, 111; 2010).

Figure 2. Secrecy at ICSID Over Time



In addition to ICSID’s core arbitration, which is available when the claimant’s host country and the respondent are both members of ICSID, ICSID also manages two other processes—conciliation (a rarely used form of mediation) and the “additional facility (AF)”, which is used if one or more of the countries involved is not a member of the ICSID Convention.³² Because AF cases involve countries that have not necessarily aligned their national laws and procedures with ICISID they can be harder to enforce directly, whereas cases that involve ICSID members are automatically enforceable. For example, AF cases may require greater use of national courts for ultimate enforcement—an extra step that

³² ICSID 2006b.

almost always requires more public disclosure of information because most national legal systems require a definitive, public ruling before they can enforce an award.³³

Explaining Secrecy at ICSID

About 40% of cases are kept secret (figure 2). Here, we suggest that secrecy in the context of investment arbitration works like a flexibility enhancing device in precisely those situations where diluting the public signal that a government has harmed investors would be most beneficial for the disputing parties.

One source of flexibility is the ability to work out bargains behind closed doors—deals that would be hard for either party to accept in a public space. We argue, in particular, that investments in industries marked by long-lived projects—where the parties have strong incentives for continued, long-term interaction—are especially likely to benefit from this kind of closed-door bargaining.

When an investor starts a bank in another country and suffers expropriation, the investment is generally done. By the time the machinery of arbitration can be mobilized and reach a final decision—most cases run one to five years—the present discounted value of the remaining investment has already evaporated, especially for complex and hotly contested cases that tend to take longer to arbitrate. In such cases, arbitration is one of

³³ Parra 2012, 145. See also ICSID 2006b, Article 3. There may be other differences in AF cases, such as the lower incidence of cases involving governments that are not ICSID members and thus weaker pressures on reputation from repeated play. We thank a reviewer for this point.

several means for obtaining compensation, but beyond payment of damages there is no necessary ongoing interaction between the claimant and respondent and the cost of arbitration may outweigh the lost investment.

By contrast, investments in projects that tend to be long-lived are much different. In these cases, firms cannot readily enter or exit. Investments might, for example, involve the building of infrastructures—such as roads, electricity grids, networks of mines, or airports—that have elements of natural monopoly and thus tariffs that are heavily regulated by government. This gives government, as well, readily available means and incentives to impose politically popular tariffs or other regulatory interventions that could be catastrophic for investors. Yet, from the investor’s perspective, there are incentives to accommodate and adjust to these government pressures rather than just walk away from the project prematurely.³⁴ Both parties in these cases benefit from the successful continued operation of these assets. From this perspective, arbitration is part of a larger process of bargaining over the allocation of rents from the ongoing operation of these assets.

³⁴ See Reisman and Digon 2009. The standard model for foreign investment in infrastructure projects—roads, tunnels, airports, power plants, ports, railroads and such—is “build operate transfer (BOT)” in which the investor builds the facility, operates it for a period, and then the asset reverts to the host state. A typical infrastructure BOT project runs 15-25 years—much longer than the duration of a typical ICSID dispute (see Tam 1999). The argument we outline here is a standard one for networked infrastructures, and our coding will reflect that logic.

This bargaining perspective on investor-state arbitration suggests that parties might initiate formal arbitration as a way to bargain under the shadow of the law even before the full range of other avenues for resolving a dispute have been exhausted—a view that would contrast with the standard legal perspective on arbitration as a mechanism to be triggered only as a last resort.³⁵ This view of legal machinery is hardly unique to investor-state arbitration. In the WTO, for example, there are important interactions between formal adjudication and the ongoing commercial and political bargaining between parties.³⁶

Exactly these kinds of long-lived investments first gave rise to classical theories of the “obsolescing bargain” that underpin the logic of international investment regimes and arbitration and the need for host governments to send credible signals.³⁷ For an investment to be made, the investor and host government must have reached an agreement that initially favored the venture. However, as the investor sinks more assets into the host country, the bargaining power shifts to the host government, in the extreme, turning fixed assets into liabilities. In industries marked by long-term investments that sink capital

³⁵ BITS typically require that other remedies be exhausted before arbitration is launched, but that standard is difficult to enforce strictly; the ICSID Convention has no such requirement. See Schreuer 2005 for the relevant doctrine and Peters 1997 for relevant commentary. The preponderance of settlement – 35% of concluded cases were concluded via settlement – may suggest that arbitration is a component of an investor’s bargaining strategy and that triggering arbitration is not necessarily a signal that an investor seeks to exit a country.

³⁶ Davis 2012.

³⁷ Vernon 1971.

there are particular incentives for host countries to adopt policies, such as requirements for new royalty payments once a mine comes into operation, that are tantamount to expropriation.³⁸

In these cases, secrecy is a valuable device to create the flexibility to reach a bargain that might be unachievable in the absence of a formal arbitral proceeding. Successfully managing the dispute will require that both sides make concessions, often with substantial audience costs for each if those concessions become publicly known—for example, the financial viability of power plants hinges on the cost of electricity sold, and electricity tariffs are highly visible to the public and often politicized.³⁹ The investor must find satisfaction in less lucrative rents from policies that it hopes will not spread to other countries where the firm also does business. Host governments may need to back down from aggressive anti-foreign rhetoric and pay compensation for past wrongs. Secrecy makes these high-stakes bargains easier to reach and implement by reducing incentives for posturing, or taking uncompromising positions, in front of shareholders or constituents.⁴⁰ In short, secrecy can help to extend the shadow of the particular investment in dispute as well as the relationship between the investor and host government.

This argument has an analogue in game theoretic models of ‘quiet diplomacy’.⁴¹ In the same way that secrecy insulates leaders in a diplomatic crisis from the domestic

³⁸ Kobrin 1987; Brewer 1992.

³⁹ Eden, Lenway, and Schuler 2004.

⁴⁰ Stasavage 2004.

⁴¹ Kurizaki 2007; Stasavage 2004.

political consequences if they capitulate to a challenge to avoid an unwanted war, secrecy in investment arbitration helps to shield governments from the negative domestic consequences of publicly capitulating to a foreign investor that has long-term sunk costs in the country.

Thus we expect to see quite different patterns of disclosure depending on the kind of investment at stake. For long-lived investments, we expect that investors and respondents will be more likely to favor secrecy because their goals in arbitration are to shape negotiations over deals that keep a costly investment intact. Making those deals feasible requires secrecy because at least one party (often both) must be able to abandon publicly declared positions. By contrast, the audience costs for a foreign investor who starts a bank are much lower because once an investment is financially dead the odds of an ongoing relationship between the investor and host country plummet—as do the benefits of secrecy.

Hypothesis 1: Arbitration of disputes over long-lived investments is more likely to remain secret.

Secrecy can also have an impact on how the process of arbitration affects reputations since secrecy allows governments the flexibility to hide information about their wrongdoing that could undermine the credibility of their broader public commitment to investor rights. Secrecy creates an avenue to lessen the blow of arbitration on governments, who do not have a say in whether they are the targets of dispute. Arbitration creates bad reputations for host governments that can negatively affect their shadow of future investment. These reputations are particularly harmful when the government is

publicly judged to be in violation of the law and the investor is awarded compensation for the wrongdoing.

This concern over reputation creates heightened incentives for secrecy when governments expect *ex ante* to lose a case. Being charged with a violation in public is bad for a country's ability to attract FDI; public defeat is even worse.⁴² While some governments might gain in popular support from suffering defeat at the hands of foreign tribunals, most states behave as if they want to conceal damaging information about the abuse they inflict on investors.⁴³ Moreover, arbitral awards often include blunt language about egregious—even corrupt—behavior by the losers. For example, a series of cases in 2006 and 2007 concerned western firms that had invested in aluminum, oil and gas industries in Azerbaijan in sectors of the economy that had been controlled by a former Economic Development Minister Farhad Aliyev. When Aliyev was jailed in 2005 for conspiracy to overthrow the government, the backlash against his allies undermined the investments and led the western firms to sue seeking millions of dollars in damages. Information revealed during the proceedings had an impact on one of the core functions of government (survival of leaders). Normally dry arbitral proceedings were brought to a standstill when one of the witnesses for the claimants testified about state bribery. The cases were settled, with special attention paid to how much information and claims of

⁴² Allee and Peinhardt 2011.

⁴³ We later examine empirically whether countries such as Argentina and Venezuela, which are at various stages of withdrawing from the institution, behave differently.

wrongdoing could be released—a matter of special sensitivity to the Azeri government, which was concerned about harm to potential future investment.⁴⁴

For parties that are subject to legal strictures against corruption—such as the US Foreign Corrupt Practices Act, similar EU anti-corruption legislation, and a growing array of broader multilateral anti-corruption agreements such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions—evidence of corruption can cause serious legal jeopardy. For example, in a case launched by Siemens against Argentina, public scrutiny led to new revelations about how Siemens obtained its contracts in Argentina through corruption—facts that later forced Siemens to abandon its ICSID award against Argentina and were harmful to the firm across the region and to the government of Argentina, which has been the recurring subject of dispute.⁴⁵ For respondent states, corruption claims can also lead to unwanted international scrutiny, and particular government officials charged with corruption can face prosecution at home. Thus, when host states see telltale signs that defeat is probable, they have strong reasons to operate in secrecy in an effort to preserve future investment into the country.

Yet it can take time and experience before states see these telltale signs. Governments facing arbitration operate with a great deal of uncertainty about the eventual outcome of the negotiation. International investment laws are imprecise, often highly contested and subject to multiple interpretations.⁴⁶ There is no formal precedent, and the

⁴⁴ Peterson 2009, 12-13.

⁴⁵ e.g., Yackee 2012. See ICSID Case No. ARB/02/8.

⁴⁶ Levinson and Goldsmith 2009.

kinds of informal precedents that have emerged in other areas of international law, such as dispute settlement at the WTO, have been slower to emerge in investment arbitration because so many awards are left in secrecy.⁴⁷ And there is evidence to suggest that governments act like “narcissistic learners”, making commitments to investment agreements without seriously considering the future risks associated until they have been brought into arbitration and learn from the process.⁴⁸ It is not until governments are both indicted and found in the wrong that they begin to more accurately evaluate the risks associated with submitting to or losing arbitration, electing for secrecy in order to avoid the costs associated with another public loss.

Over time, most governments have come to defend themselves more than once and they can look at their own rate of losing in the past as a rough guide for the future—for claimants, looking to history is harder because most only file one case in their entire lifetimes. We expect that respondents with a history of past public losses will be more inclined to keep future arbitration secret. Having already lost a case, the government is prone to fear it may lose again and might even believe, as Venezuela and Argentina have publicly argued, that the system is stacked against them. Moreover, respondents may be especially concerned that their losses become public knowledge that is harmful to their reputation as a credible host for investment.

Hypothesis 2: Arbitration of disputes against respondents with a history of past public losses is more likely to remain secret.

⁴⁷ Pelc 2013.

⁴⁸ Poulsen and Aisbett 2013.

We are mindful that while we are focused, here, on the reputational effects of public losses that governments may be balancing many different factors that may be hard to measure with precision, and that they may also learn from their own history of past secret losses (which we cannot detect).

The Movement Against Secrecy

There are potential costs to secrecy, which helps explain why not all cases are kept secret. When results are kept confidential it is difficult for actors to establish public reputations, making it harder to deter future accusations and attract FDI.⁴⁹ For investors and host governments, alike, opting for secrecy can spur pressures for information that create focal points for public dissent. Some of the costs of secrecy are borne not by individual parties to arbitration but by the collective good, such as well-functioning international institutions. Secrecy prevents, for example, public scrutiny of arbitrator conduct or conclusions⁵⁰ and makes it harder to develop a shared body of interpretations of international investment law.⁵¹ Secrecy may also impede the formation of legitimacy that arises when legal institutions operate effectively in the public eye.⁵² Indeed, some scholars

⁴⁹ Bütte and Milner 2008; Haftel 2010. On the costs of secrecy in the context of the WTO, see Kucik and Pelc 2013; and Johns and Pelc 2014.

⁵⁰ Rabinovich-Einy 2002; Waibel and Wu 2011.

⁵¹ Roberts 2010.

⁵² Finnemore and Toope 2001; Risse 2000; Yackee and Wong 2010.

argue that secrecy undermines the long-term viability of arbitral institutions such as ICSID.⁵³

For all these reasons, the past few decades have witnessed growing pressure to make international organizations more transparent.⁵⁴ No arbitral institution has experienced a greater shift in formal rules and procedures around secrecy than ICSID, which has experienced pressures on four fronts, intended to make secrecy both more difficult to achieve and more costly for parties to arbitration. First is the World Bank, which hosts ICSID. The Bank, in tandem with other Bretton Woods institutions, was in the cross hairs of the anti-globalization movements of the 1990s, which were partly animated by concern that closed-door negotiations shut out civil society and prevent public accountability. Because key staff in the ICSID secretariat were drawn from the Bank, these same pressures spread to ICSID.⁵⁵ For example, Ibrahim Shihata, ICSID's longest serving Secretary-General, simultaneously served as the Bank's general counsel and was centrally involved in the Bank's own reform movement while he also sought to make ICSID more transparent.

Second, a growing group of NGOs have become more attentive to investment law and its possible social impacts. These organizations routinely shame both the investors and the governments involved in arbitration. In particular, large segments of the NGO community were galvanized around the dangers of private investment law by the *Metalclad*

⁵³ Puig 2013; Waibel et al. 2010.

⁵⁴ Keohane 1998; McGee and Gaventa 2010.

⁵⁵ Parra 2012, 138-141, 323.

case, decided by an ICSID panel in 2000 in favor of a U.S. corporation which claimed that Mexico's state environmental laws undermined the value of Metalclad's foreign investment.⁵⁶ While the Metalclad case was not kept secret, it entrained many of the same issues—such as fear that international institutions would encroach on national sovereignty—that also resonated with the NGO-based transparency movement.⁵⁷ In response, NAFTA's member governments adopted several reforms—including a July 31, 2001, decision by NAFTA's Free Trade Commission—which reinterpreted the treaty in ways that allowed any party to a dispute to disclose the outcome without universal consent of all the parties and thus made disclosure more likely for the subset of ICSID cases based on NAFTA.⁵⁸

Third, some governments have altered their own foreign investment laws in ways that facilitate more public participation. A growing number of investment treaties now require disclosure of arbitral awards. For example, since 2004, the U.S. Model BIT—the template that the U.S. government uses when negotiating new BITs—has included provisions that favor disclosure. That model BIT was based on the 2002 Trade Promotion Authority Act, and the disclosure provisions in CAFTA (finalized in 2004 and adopted into law the next year under the same trade promotion authority) are very similar to the 2004 Model BIT.⁵⁹ A few other BITs, notably the 2006 BIT between Spain and Mexico (which has

⁵⁶ ICSID 2000.

⁵⁷ Choudury 2008.

⁵⁸ NAFTA 2001.

⁵⁹ e.g., Gantz 2007; and see CAFTA Ch. 10, Article 10.21.1.

generated only seven fully concluded ICSID cases in our data set), have disclosure rules as well.

Fourth, ICSID's secretariat has pursued a wide array of institutional reforms aimed at making itself more transparent and encouraging the parties to the dispute to inform the public. ICSID staff have played a central role in articulating how secrecy is harmful to the institution's legitimacy.⁶⁰ From the 1980s, the secretariat began publishing excerpts of the legal reasoning in nearly all cases even when the parties refused to release the full details of a case.⁶¹ In tandem with these reforms, former ICSID Secretary-General Shihata opened ICSID's archives to select scholars.⁶²

The secretariat also masterminded the institution's most extensive formal transparency reforms, adopted in 2006. It even took the unprecedented step of publishing the proposals that led to the 2006 reforms and soliciting external comments, notably from NGOs. Those reforms gave arbitral panels more flexibility in making information public and soliciting additional views from non-parties and would not have been adopted without the support of a large number of ICSID member governments that were under similar domestic pressure.⁶³ Indeed, according to ICSID's Secretary-General Meg Kinnear, ICSID is "at the forefront of the trend toward increased transparency in the conduct of investment

⁶⁰ Kinnear, Obadia, and Gagain 2013.

⁶¹ Puig 2013.

⁶² Schreuer 2001.

⁶³ Parra 2012; Puig 2013.

arbitration”.⁶⁴ Alongside ICSID’s own efforts, other institutions that handle investor-state arbitration have also undergone reforms aimed at transparency.⁶⁵

Hypothesis 3: Arbitration of disputes is less likely to remain secret in the post-reform period (after 2000).

We offer this hypothesis as a first step in assessing whether rates of secrecy have changed in the face of institutional reforms aimed at increasing transparency. We are mindful, however, that actual patterns of secrecy will respond to many factors, including those that we might not measure in this study.

Empirical Analysis

We evaluate the argument on a newly collected dataset of all cases filed before ICSID from January 1, 1972 to April 20, 2012. Because we are interested in characteristics of both the claimants, of which there can be multiple per case, and respondents, as well as the nature of the dispute, our unit of analysis is the claimant-case.⁶⁶ Our dependent variable,

⁶⁴ Kinnear, Obadia, and Gagain 2013, 109.

⁶⁵ Notably the reforms at UNCITRAL (UNCITRAL 2014), although those are so recent that they probably have no impact on the time period in our analysis. Future research might also explore interactions between investor-state arbitration and other forms of arbitration, such as purely commercial arbitration, which might alter incentives for transparency.

⁶⁶ Approximately 1/3 (126 out of 372) of the observations in our data involve multiple claimants: 45 involve 2 claimants; 13 involve 3 claimants; 8 involve 4; and only 4 cases involve more than 4 claimants (with 12 being the highest number).

Secret, describes whether the full final outcome of a concluded case was formally disclosed (0) through ICSID or through other official sources with the consent of the parties or concealed (1). Unfortunately, no existing single source of information on disclosure and content of awards is complete or adequate. We thus have compiled data from various sources—mainly the ICSID website and the Investment Treaty Arbitration website⁶⁷, the most widely utilized public sources of information on arbitration—using consistent rules that reflect what the parties could reasonably expect would be disclosed at the time they made key decisions during the arbitration process.⁶⁸

In order to evaluate when arbitration is likely to be kept *Secret*, we first (in Column 1) estimate a logit model:

$$Pr(\text{Secret}=1) = f(\beta_0 + \beta_1 \text{LongLived} + \beta_2 \text{Losses}_R + \beta_3 \text{PublicCases}_R + \beta_4 \text{Reform} + \beta_4 \text{AdditionalFacility} + \varphi X + \varepsilon)$$

(Equation 1)

and then (in Column 2) include X , a vector of control variables.

Our first hypothesis is that disputes over long-lived investments in industries such as infrastructure (e.g., roads and tunnels), electric power and mining are more likely to conclude in secrecy than are disputes over investments in industries that are intrinsically shorter in duration and involve less ongoing interaction between investor and regulator

⁶⁷ www.italaw.com.

⁶⁸ We have also consulted the highly selective printed record, *ICSID Reports*, to cross check information and thank Leslie Johns and Andrea Vilan for their assistance. See also the Appendix that maps data from ICSID to our category codes.

over the lifetime of the project. We cannot directly measure the intended or actual lifespan of an investment under dispute. Thus, to evaluate this claim, we code *LongLived* (1) for disputes pertaining to industries where foreign investment practice has focused on investments of this type (electricity and electric infrastructure, hydrocarbon supply and infrastructure, mining, ports and airports and roads, railroads and transport infrastructure). Power plants or mining networks are typical of such industries—the value of these investments comes from operation over often many decades, once the capital is sunk the investor cannot readily exit without abandoning the investment altogether; the host government, as well, depends on the operational expertise and continued involvement by the investor to obtain the maximum local value from the project. All other investments (agriculture, food, drinks, forestry, financial, general industry, general infrastructure, telecommunications, tourism, and a residual other category) are coded *LongLived* (0).⁶⁹ We also code separate binary variables for each category of industry in dispute (full details are included in the appendix). Approximately 50% of disputes in our study involve long-lived investments.

To evaluate our second hypothesis—that governments with a public history of losing are more likely to shroud arbitration in secrecy in order to reduce the reputational and material harm of another loss—we code *Losses_R* for all of a respondent’s previous

⁶⁹ For each case, ICSID provides summary information such as claimant, respondent, date of registration, etc. One piece of information provided is “Subject Matter.” We coded *LongLived* from ICSID’s identified subject matter. See the Appendix for our mapping from ICSID’s information to our categories.

public cases. The measure varies from 0 to 9, indicating that some countries—notably Argentina and Egypt—have gone into arbitration with a past history of many public losses (defined as being in breach of a treaty or contractual provision as determined by an arbitral panel). To code $Losses_R$, we read the text of each case and observed the votes of each arbitrator. We code a respondent as having lost if 2 or more panelists reject the state’s main arguments.⁷⁰ The wording of arbitration awards is quite clear on which party’s claims it upholds.⁷¹ If a case is dismissed on jurisdiction grounds, the respondent has won.

More than one-third—36%—of all states targeted by investors had previously (and publicly) lost one or more cases. To isolate the effect of past losses from the effect of public ICSID experience more generally, we control for the respondent’s total previous number of public cases ($PublicCases_R$), which varies from 0 to 13. This allows us to distinguish between respondents that have never lost a previous case because they have always won from those that have never lost because they have never previously been the target of a public arbitration. While we are mindful that respondents may also learn from their own history of past secret losses, we are unable to directly measure these outcomes precisely

⁷⁰ A very small number of cases have only one arbitration panelist. Typically, the claimants and the respondent each appoint one arbitrator, and the third, the president of the arbitral panel, is chosen by agreement of the parties, by agreement of the party-appointed arbitrators, or from a roster of arbitrators that ICSID’s secretariat manages.

⁷¹ For example, the three panelists in *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil vs. The Republic of Estonia* find “All of Claimants’ claims are dismissed” (pg. 96). In our binary coding of cases, we assign the “win” to the party that wins the majority of the claims.

because they are concealed.

To evaluate the third hypothesis—that secret arbitration should have declined after 2000 when reforms began to take effect—we code *Reform* as the number of years from the year 2001. This measure is at best a proxy because we have no way to directly code reform other than to differentiate pre- and post-reform periods. Although ICSID’s own efforts began in the 1980s, the most substantive reforms pivot around the year 2001 and gain prominence over time with outcomes such as the 2006 formal reforms to ICSID procedures. They include efforts to disseminate information more widely through newsletters, the ICSID website, and specialized publications, as well as greater access to third parties.

We also account for two additional institutional factors that may reduce secrecy. First, a few BITs and multilateral investment agreements require disclosure of awards. We therefore code *Public Provisions* as 1 if the agreement used as the basis for arbitration requires disclosure and 0 otherwise. If disputes brought under those agreements are concluded with an ICSID ruling, they must be made public. Because all *Public Provisions* cases are public, we constrain the models to exclude those seven cases where *Public Provisions* is equal to 1. Second, we include a binary variable for the ICSID’s *Additional Facility*, which may exert a pull towards transparency because, as noted earlier, these cases often rely more heavily on domestic courts for enforcement.

In Column 2 we account for certain characteristics of the claimant and respondent states that could also influence the decision to conceal arbitration. To account for power

imbalances between host and claimant states,⁷² we control for the claimant's ($\log GDP_C$) and respondent's ($\log GDP_R$) GDP per capita and the respondent's inward FDI ($\log FDI_R$) as a proportion of GDP—both from the World Bank's World Development Indicators. (All wealth figures are reported in 2011 constant dollars.) Low income could correspond with immature public institutions and a large role for the state in the economy—all of which could make it easier for actors to keep information secret. Respondents with low dependence on inward FDI might also be less inclined to reveal arbitral results publicly because they are less vulnerable to the consequences of gaining a bad reputation for their behavior in international arbitration. Similarly, the lack of well-developed democratic institutions may correspond with the lack of domestic legal requirements and expectations of public transparency as well as a dearth of independent pressure groups; such factors would allow governments to pursue secrecy when it is convenient. Indeed, a move toward democratic rule is widely associated with greater disclosure of information related to the conduct of public institutions and public policy. We thus control for $Polity_C$ and $Polity_R$, which range from -10 to 10.⁷³

Finally, we include information on whether either the respondent or the claimant's home governments had ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (*Bribery*) at the time the dispute was registered at ICSID. We use this measure as a proxy for the presence of domestic institutions specifically designed to curtail and expose corruption related to international

⁷² Allee and Peinhardt 2014.

⁷³ See www.systemicpeace.org/polity/polity4.htm.

business transactions. The Convention is a procedural one—it does not set detailed standards for anti-corruption policies but requires that governments adopt and implement domestic laws that make bribery of foreign public officials a criminal offense, including official enforcement procedures that are “effective, proportionate and dissuasive criminal penalties” (article 3). We expect arbitration is less likely to be kept secret among parties where governments have ratified this Convention because fraud—a key incentive to hide losing—is less likely. Column 2 of Table 1 reports estimates from this extended model. Descriptive statistics as well as correlations are reported in the Appendix.

TABLE 1. Predicting Secret Arbitration at ICSID, 1972-2012

	Private	Private	Private
<i>LongLived</i>	0.928*** (0.239)	0.816*** (0.264)	
<i>LOSSES_R</i>	0.872*** (0.252)	1.156*** (0.291)	1.288*** (0.320)
<i>PublicCases_R</i>	-0.576*** (0.196)	-0.753*** (0.226)	-0.818*** (0.251)
<i>Reform</i>	0.0574 (0.0409)	0.200*** (0.0617)	0.217*** (0.0658)
<i>Additional Facility</i>	-2.006*** (0.638)	-2.539*** (0.681)	-2.454*** (0.761)
<i>Bribery_R</i>		-0.925** (0.439)	-0.740 (0.473)
<i>Bribery_C</i>		-1.391*** (0.412)	-1.426*** (0.435)
<i>GDP_R (Log)</i>		0.256* (0.136)	0.0932 (0.151)
<i>GDP_C (Log)</i>		0.776*** (0.266)	0.874*** (0.292)
<i>Polity_R</i>		0.0413 (0.0260)	0.0765*** (0.0294)
<i>Polity_C</i>		-0.136* (0.0722)	-0.160** (-0.740)
<i>FDI_R (Log)</i>		-0.133 (.121)	-0.125 (.129)
<i>Intercept</i>	-1.047*** (0.221)	-9.014*** (2.602)	-8.905*** (2.781)
Industry FE	No	No	Yes
Log Likelihood	-215.777	-185.006	-177.154
Pseudo R ²	0.103	0.184	0.225
<i>N</i>	359	339	342

Standard errors in parentheses (***) p<0.01, ** p<0.05, * p<0.1)

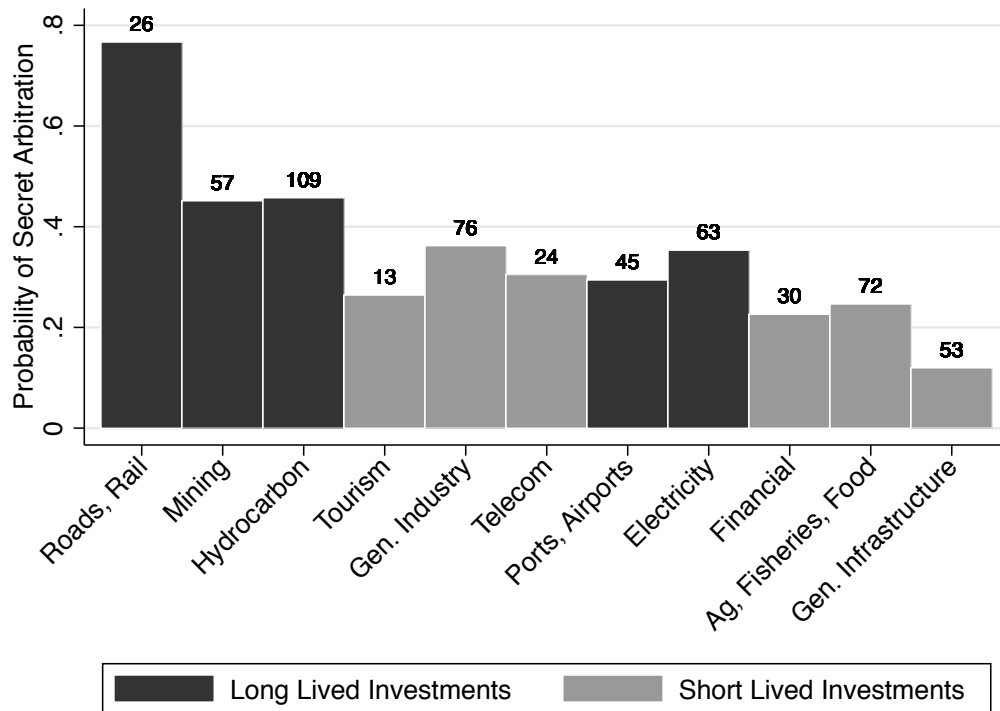
Hypothesis 1: Long-Lived Investments

The estimates reported in Columns 1 and 2 indicate that secrecy is partly a function of the kinds of investment under dispute—the coefficient on *LongLived* is a positive and statistically significant predictor of secrecy. In these types of cases, it is in the interest of both parties to conceal the results in order to reduce incentives for public posturing that

can lead to breakdowns in negotiations.

In Column 3 we include fixed effects for the type of industry in order to ensure, in particular, that countries with high numbers of public losses are not differentially attracting long-lived investment. This gives us variation within industries that allows us to show that our specification of “long-lived” is not what is driving the significance of the other variables (which we discuss next). We graph the predicted probabilities of secrecy by each industry in Figure 3, holding the other variables in the model constant at their means. The numbers above each bar represent the total number of claimants in each industry. The black bars represent industries where we have determined that investments tend to be long-lived and show that the probability of secret arbitration is higher for disputes over these industries. The predictions are statistically significant for Roads and Rail, Mining and Hydrocarbon.

Figure 3. Probability of Secret Arbitration by Industry



Hypothesis 2: Hiding Respondent Losses

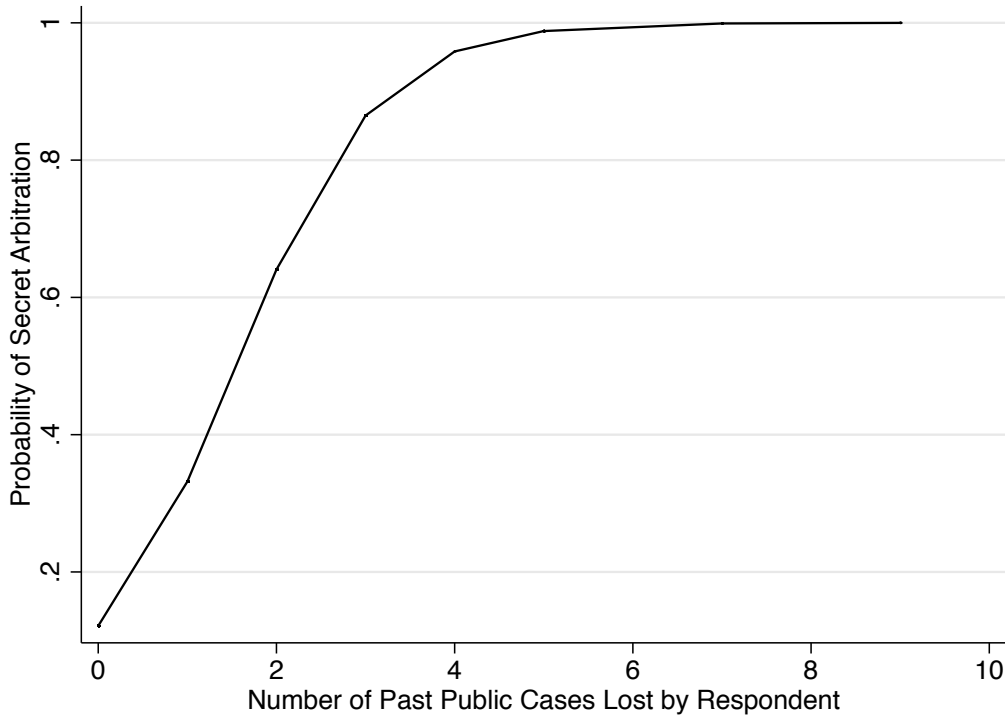
Table 1 suggests, indirectly, that concerns for reputation—avoiding public losses—also matter. About 48% of respondent states in our dataset have been the subject of one or more previous public ICSID disputes, and 36% have previously publicly lost at least one case. Respondent states are more likely to be parties to secret cases when they have past experience publicly losing cases, even when controlling for the number of public cases they have experienced. The coefficient for $Losses_R$ is positive and statistically significant.⁷⁴

⁷⁴ Because $PublicCases_R$ is highly correlated with $Losses_R$, we re-estimated the model (Column 2, Table 1) removing $PublicCases_R$ and find consistent results. We also replace the count of a respondent’s past public cases ($PublicCases_R$) with the count of the respondent’s

Figure 4 illustrates the result for an average state by plotting the predicted probabilities of secrecy (generated from Column 2, Table 1) as they vary by the number of previous *Losses_R* holding all other variables constant at their means. This simulates the marginal effect of losses at the means of the data. The effects are quite substantial. For a state with no previous experience of *Losses_R*, the model predicts less than a 14% likelihood of secret arbitration. A state with 2 previous public losses is likely to be a party to secrecy more than 60% of the time, whereas a state that has lost 4 or more past (public) cases is predicted to engage in secret arbitration nearly 100% of the time. This suggests that, while a few governments may prefer to publicize a likely loss, most seek to hide their defeat, potentially in order to reduce the reputational and material harm from losing again.

total number of past cases (whether public or secret). The results hold and the coefficient on total past number of cases is also a positive predictor of *Secret*.

Figure 4. Probability of Secret Arbitration: Past Public Losses



Hypothesis 3: Reform Against Secrecy

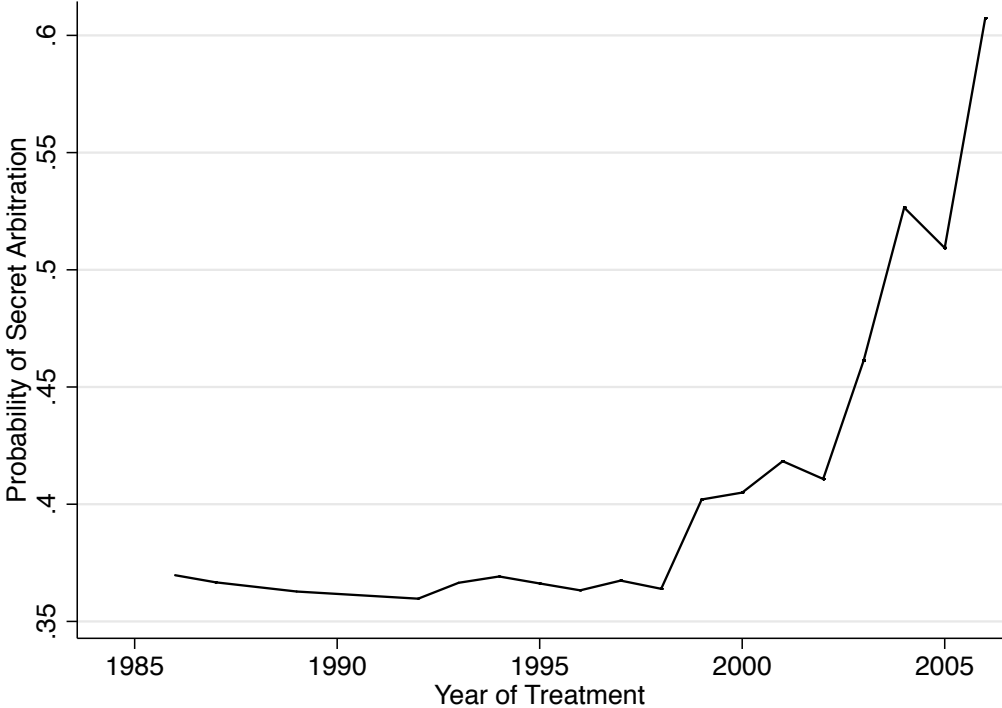
Here, we investigate whether ICSID’s own efforts to create a norm against secrecy correspond to a reduction in secret arbitration over time—as the many different reforms aimed at putting ICSID at the forefront of transparency have intended, and as ICSID has claimed. We find, in fact, no clear evidence that ICSID’s efforts correspond to a reduction in the overall probability of secrecy over time. The coefficient on *Reform* predicts that, all else equal, the parties to recent disputes (after 2001) are more likely to conceal the outcome of arbitration than are the parties to disputes that took place prior to the start of ICSID’s intensive efforts to increase transparency.

In order to determine whether that finding is an artifact of our decision to code a

Reform treatment as taking effect in 2001, we also evaluate alternative pivot years for the initiation of reform. We estimate a model for every possible pivot year beginning in 1985 when ICSID launched its first transparency efforts, through 2006 when it changed its formal rules of procedure.⁷⁵ Figure 5 plots the predicted probabilities of secrecy at or after each potential reform treatment year. For example, the figure shows that cases filed on or after 1995 had about a 35% probability of being secret; after 2005 that probability rose to 50%. It illustrates that the probability of secrecy became more likely beginning in the early 2000s—precisely when ICSID launched its most intensive efforts for transparency. While ICSID has tried to increase the probability of public disclosure, those reforms have not been followed by a consistent reduction in secrecy over time—instead, the opposite.

⁷⁵ For more on the rule changes see Parra 2012.

Figure 5. ICSID Transparency Efforts: Rolling Reform Treatment

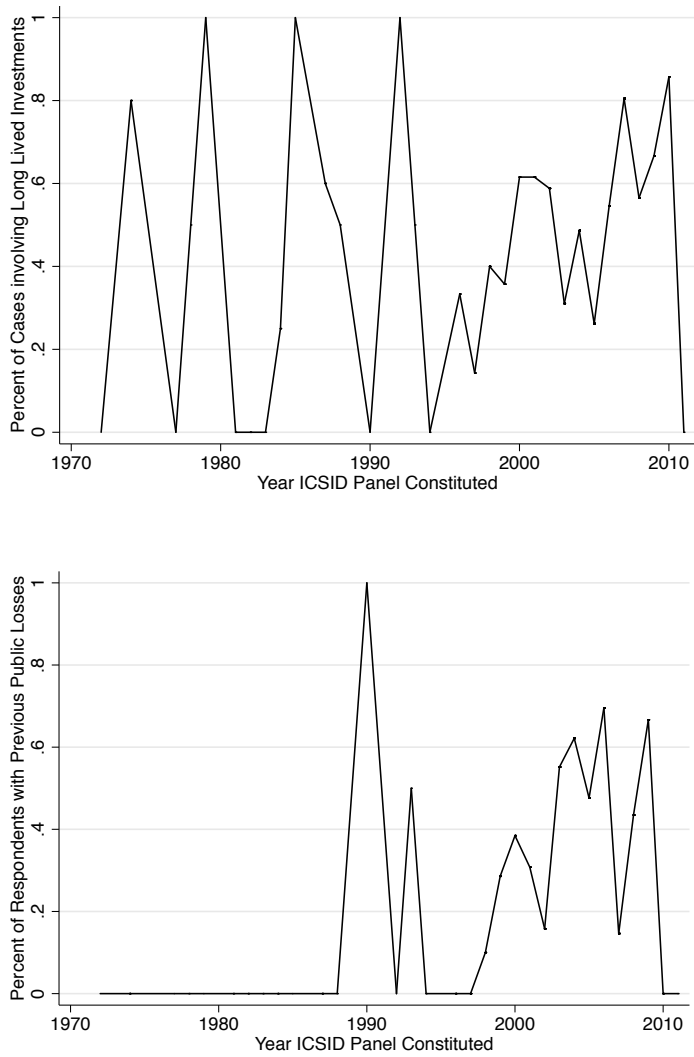


We cannot distinguish whether this finding is causal—whether reform efforts have somehow backfired, increasing the benefits of secrecy to parties in dispute over time. It is plausible that ICSID’s efforts to dampen secrecy are simply a response to a steadily growing interest by the parties to arbitration for secrecy. Claimants over time have brought more of the types of cases where the incentives to veil arbitration in secrecy are strongest. Figure 6 illustrates. Beginning in the year 2000, claimants began lodging a growing number of complaints over long-lived investments. Claimants also began to lodge more complaints against respondents with a previous history of losing at ICSID. In other words, alongside ICSID’s growing efforts to reduce secrecy over time is another trend: the nature of the disputes brought for arbitration increasingly pull towards secrecy, although there is a great

deal of variance year by year.⁷⁶ Yet our statistical models of institutional reforms—plotted in Figure 5—control for these factors. Holding *LongLived* and *Losses_R* constant, no matter in what year we measure the start of a reform treatment, ICSID's *Reform* efforts have not been followed by a consistent reduction in secrecy over time as ICSID's leaders hope. Although we cannot conclude that ICSID reforms, in practice, have little real (or even negative) impact, we can conclude that the overall probability of secrecy has not declined over time despite reform efforts.

⁷⁶ The variance before 1995 reflects the scarcity of cases.

Figure 6. Secret Arbitration: Trends Over Time



In contrast to *Reforms*, the *ICSID Additional Facility* is a highly significant predictor against secrecy. These cases are public in part because the Additional Facility, unlike ICSID’s core arbitration, does not lead to automatically enforceable awards. The OECD Convention on *Bribery* also predicts against secrecy. Cases where the host or investor governments of disputing parties have ratified this Convention—and thus require the adoption and implementation of domestic laws that make bribery of foreign public officials a criminal offense prosecuted publicly by state institutions—are less likely to be kept secret.

Robustness Checks

We take several additional steps in an effort to determine the robustness of the findings. In Column 1, Table 2 we include fixed effects for each case; the findings are consistent. Column 2 includes fixed effects for time—specifically, the year in which the ICSID panel was constituted. This allows us to examine the effect of the variables between countries in a given year. The estimates remain consistent.

Column 3 includes a control for investment disputes with Argentina, which accounts for more arbitration at ICSID than any other host government (and is likely one of the few governments that might actually benefit from publicly losing arbitration). This is notably important since the ICSID caseload has swelled over the last decade by economic and political crises in Argentina. Controlling for disputes against Argentina—a clear outlier—does not improve the model fit or change the model’s substantive results, though cases against Argentina are likely to be kept secret.⁷⁷

Column 4 controls for cases we coded from Investment Treaty Arbitration (ITA)⁷⁸ sources rather than ICSID to reveal whether our results might reflect a bias from the organizations that collect investment awards. ICSID’s ability to publish awards on its

⁷⁷ There are a variety of other respondent governments that have several cases filed against them and, like Argentina, those cases tend to cluster together in time. They include the Central African Republic, Ecuador, Hungary, Mexico, Peru, Ukraine, and Venezuela. When we include controls for these other countries, our core results do not change.

⁷⁸ Available at italaw.com.

website reflects not only whether the parties consent to publication but also perhaps various bureaucratic inefficiencies or inconsistencies. ITA, by contrast, can draw from a wider array of sources that might include cases that the parties did not intend to reveal to the public, such as through leaks—inclusion of that data might lead to a source of bias, although we see no evidence of that problem in Column 4.

We are not able to evaluate whether a claimant's history of prior public losses affects the secrecy decision because few claimants in our dataset have prior public losses. We can, however, evaluate whether a claimant's past history of bringing cases, their overall *Experience_c*, affects their secrecy decisions. *Experience_c*—measured here as a count of the claimant's previous disputes in Column 5 is negative and statistically insignificant, while all other variables in the model remain consistent in sign and significance.

In Column 6 we include additional information on *Corruption* measured by the Worldwide Governance Indicators. This measure captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.⁷⁹ Unfortunately, these data are available only beginning in 1996, substantially reducing our sample size. The core findings nonetheless remain.

In Column 7 we estimate an alternative indicator for the strength of the respondent government. Recent work suggests a correlation between inflation and the occurrence of investment arbitration,⁸⁰ which may indicate a more immediate source of weakness than

⁷⁹ For more details, see <http://info.worldbank.org/governance/wgi/index.aspx#home>.

⁸⁰ Simmons 2014.

the size of a respondent's GDP. Using World Bank data, we therefore control for the respondent's inflation rate in the year an arbitration panel was constituted, *Inflation_R*. Inflation is a positive predictor of secrecy alongside the core findings, which remain significant.

In line with recent research on the conditions under which governments can break contracts with foreign firms,⁸¹ we also include a measure in Column 8 designed to capture the diversity of the nationality of investors, which may affect the capacity of respondent governments to defend themselves. This measure is the inverse of the Herfindahl-Hirschman Index—a value of 1 means all of a country's FDI is from one other country and increasing values correspond to greater diversity. Controlling for this diversity, the main results are again statistically significant. Interestingly, as a country's FDI base increases its diversity, an arbitration outcome is less likely to stay private.

Finally, while our focus is the decision for secrecy, which can be made by any party unilaterally, we briefly explore joint decisions about the transparency of arbitral outcomes. Transparency is most likely to occur—according to the logic of our theory—when disputes are over short-lived investments *and* governments do not have a visible history of losing. This is precisely what we see when we estimate the predicted probabilities of our model (Table 1, Column 2) at different values of *LongLived* and *Losses_R*. Specifically, when the dispute is over a short-lived investment and the accused government has never previously (publicly) lost, the probability of secrecy is only 10%. By contrast, when the dispute is over a long-lived investment and the government had previously lost a case, that probability

⁸¹ Wellhausen 2015a; 2015b.

rises to 43%. It rises to nearly 90% if the government had previously lost three cases and to 100% with any further losses. These predictions are consistent with our argument.

An Illustration: Leaked Secrets

So far we have discussed these matters with reference to the full universe of (concluded) cases that ICSID had handled during the time period of this study. Here we look at the single case in our data where the parties following the formal ICSID procedures intended outcomes to remain secret but those outcomes were later leaked in ways that made it possible to reveal the details of the case.⁸² The case concerns Chevron's natural gas production in Bangladesh and, though it was intended to remain a secret, the case has now generated a substantial public record that help to illustrate the ideas advanced in this paper. As noted earlier, one puzzle for future research is why so many secret awards remain secret when parties may have incentives to leak—the case presented here is one of the few exceptions, and we leverage this example in order to determine whether it fits broadly with our theoretical expectations.

⁸² After an exhaustive online search, we were able to locate only one other ICSID case whose award was intended to remain secret but details of which were leaked to the public. In that case, ICSID ARB/10/16, leaked diplomatic cables via Wikileaks revealed outcomes related to a relatively minor real estate dispute between the AES Corporation and Kazakhstan. Having searched widely in non-official sources as well as all three more official sources (ICSID's website, ICSID Reports, and ITA) we are confident that leaks are not common.

After massive economic reforms in the early 1990s the Indian economy began to grow quickly and so did its demand for energy.⁸³ Seeing this, a wide array of foreign firms sought ways to supply fuel and electricity to the growing Indian economy. Those firms included Unocal, a US-based company that specialized in the development of natural gas resources in Asia. It looked at a range of options including piping gas from Turkmenistan across Afghanistan then Pakistan to India (a project infused with risk) as well as the seemingly easier task of producing gas in neighboring Bangladesh and piping it west into India.⁸⁴ Working with other partners it acquired three major exploration blocks in Bangladesh and discovered vast amounts of gas in 1998 at what became known as the Bibiyana gas field. It found gas elsewhere as well and over time linked its various gas fields to become the largest single producer of gas in the country. Because it had its eyes on Indian prizes, Unocal carefully designed its contracts to give it flexibility in where it sold the gas so long as it paid Petrobangla, Bangladesh's state-owned hydrocarbon monopoly, a transit fee. And because it feared mistreatment in the local Bangladeshi courts, Unocal incorporated its investment into a series of Bermuda-based companies—allowing it access to mandatory offshore arbitration under the U.K.-Bangladesh Bilateral Investment Treaty.

In tandem with Unocal finding gas, political relations between India and Bangladesh soured and the option of piping gas to the lucrative Indian market vanished. That left Unocal—which in 2005 was bought by Chevron—no serious option but to sell the gas to Petrobangla at prices low enough that the gas could be used within Bangladesh. Thus

⁸³ Tongia and Arunachalam 1999.

⁸⁴ Olcott 2006.

Petrobangla became Chevron's only customer and as Chevron kept finding and producing more gas it became Petrobangla's largest supplier. Both sides were mutually dependent on each other in a long-lived, capital-intensive and highly regulated venture to produce, pipe and sell gas.

The dispute arose because in addition to buying the gas, Petrobangla also charged a large (4%) transit fee. Chevron contended that costly transit fees were originally designed only if Petrobangla merely moved the gas to other customers—not if Petrobangla, itself, purchased the gas for its own reselling. These kinds of disputes are commonplace surrounding fixed infrastructures in the oil and gas industry because once an infrastructure is in place both sides have an incentive to reap as large a fraction of the rents for themselves as possible.⁸⁵ We would expect both sides in this dispute to want to keep the dispute secret since both would need to engage with each other repeatedly even after the dispute was over, and secrecy would reduce incentives to posture that would threaten negotiations.

Although both sides favored secrecy, news of the case leaked and revealed that both sides behaved in ways consistent with the theoretical propositions argued in this paper. Chevron sought to use offshore arbitration to force Petrobangla to agree on a reduced (ideally zero) transit fee. The government of Bangladesh, uninterested in negotiation on those terms, obtained a favorable ruling in the country's domestic courts to block international arbitration and thus refused to participate in the proceedings. It also hired as its chief lawyer a member of the country's anti-corruption commission, thus

⁸⁵ Woodhouse 2006.

raising the specter of a high profile conflict between a leading authority on corruption and one of the country's largest foreign investors.⁸⁶ Bangladesh's concerns about international arbitration were understandable—in 2002, a similar dispute between Cairn Energy, an oil and gas exploration firm based in Britain, and Bangladesh on similar contractual matters had been decided in favor of the foreign investor.

In the face of all these difficulties, Chevron went so far as to seek help via the U.S. Embassy in Dhaka and send a letter on State Department stationary to senior Bangladeshi officials that included a warning that failure to engage with ICSID presented risks “to Bangladesh's commercial reputation, as other companies watch this case closely for signals about the sanctity of contract in Bangladesh and treatment of foreign investors.” While the public record does not reveal if that letter was ever sent, disclosures on Wikileaks reveal the cable from the U.S. Embassy in Dhaka back to Washington.⁸⁷

Ironically, after Bangladesh engaged with ICSID it won the case and was not forced to repay past transit fees nor to stop charging them in the future. This unexpected win may help explain why news of the outcome leaked immediately in the local press⁸⁸ and was soon picked up by the international oil and gas press.⁸⁹ For Bangladesh, unexpected good news would have played well locally. For Chevron, whose audience costs were now greater following this loss, silence remained the rule. The company never issued a press release

⁸⁶ Embassy Dhaka 2007.

⁸⁷ Embassy Dhaka 2007.

⁸⁸ Financial Express 2009.

⁸⁹ Upstream 2010.

nor a public filing for its investors on the outcome that would have been worth hundreds of millions of dollars. The parties never agreed to release the results publicly and thus ICSID, to this day, lists the case as private and has issued only rudimentary procedural details.⁹⁰ The inability of ICSID to release the case even though the outcomes have now become widely known underscores the strict institutional constraints under which it operates.

While this dispute did affect the allocation of the rents from gas production in Bangladesh it appears to have had little impact on the ongoing business relationships between Chevron and Bangladesh. In the midst of the arbitration, for example, in 2009 Petrobangla gave Chevron approval to invest in a \$53m gas compressor station that would allow a radically increased output from Bibiyana and nearby fields.⁹¹ That same year, Chevron invested massively in new exploration for gas in the country, finding new gas deposits that were the largest on record for a decade.⁹²

Conclusion

Scholarship on BITs and investor-state arbitration is now beginning to flourish in political science.⁹³ That trend is welcome because these agreements have sparked important

⁹⁰ ICSID 2011.

⁹¹ Energy-pedia 2009.

⁹² Chevron 2012.

⁹³ e.g., Allee and Peinhardt 2010; 2011; Elkins, Guzman, and Simmons 2006; Haftel and Thompson 2013; Jandhyala, Henisz, and Mansfield 2011; Milner 2014; Neumayer and Spess 2005.

debates with large implications for theory and policy. Some scholars see BITs and arbitration as a fair, efficient and balanced mechanism that helps to facilitate higher levels of FDI—especially in the developing economies that need it most. Others are more skeptical—seeing international investment laws (and globalization more generally) as a source of exploitation of the developing world by wealthy corporations, and a threat to transparent, democratic governance.⁹⁴ From either perspective, understanding how arbitration actually works is of vital importance.

In this paper, we have shown how the parties to arbitration use secrecy as a means of obtaining flexibility in arbitration. Secrecy makes it easier to work out deals—under the shadow of the law—that leave investor and host better off. It is a way to hide inconvenient information that, if a party knew might be exposed, could lead parties to avoid investment arbitration or investments altogether. As such, we suggest that the use of secrecy be viewed within the larger framework of legalization and flexibility that has animated so much productive work at the intersection of international law and international relations in recent years.⁹⁵

We are also mindful that the use of secrecy raises larger questions and tradeoffs in the operation of public legal institutions. On the one hand, widespread use of secrecy affects public deliberation and perhaps the broader legitimacy of international institutions. Many scholars who study international institutions have argued that public deliberation is an essential mechanism through which international institutions gain legitimacy and thus

⁹⁴ e.g., Price 2005.

⁹⁵ Hafner-Burton, Victor, Lupu 2012.

have a practical effect on behavior.⁹⁶ This line of scholarship has not focused squarely on dispute resolution and arbitration, but the logic applies equally—where arbitration plays a central role in how international legal obligations are interpreted in practice, secrecy prevents public deliberation about law. Our research shows that certain types of investment disputes tend to be hidden from public debate and thus could undermine an important function of adversarial legal processes—public deliberation—often in precisely those cases where the most is at stake for the public. The enduring pressures for secrecy that result from firms as well as government interests has, not surprisingly, been central to the public backlash against investment law and arbitration.⁹⁷

Yet on the other hand, secrecy may be essential to the efficiency of international institutions. We have suggested that it can reduce incentives for political posturing that could ultimately harm the public interest if investors and governments adopt uncompromising positions so as not to appear to cave in.⁹⁸ In short, secrecy offers flexibility in some of the most sensitive disputes but in doing so weakening the public signal of commitment to uphold investor rights in precisely those types of cases. This tension between these two effects of secrecy—the undermining of debate and legitimacy but the promotion of efficient transactions—is an enduring element in the design of legal systems. And as international investment law becomes more demanding and spreads to

⁹⁶ e.g., Finnemore and Toope 2001; for an alternative view, see Gilligan, Johns, and Rosendorff 2010.

⁹⁷ Waibel et al. 2010.

⁹⁸ Stasavage 2004.

cover many areas previously considered the sole prerogative of national law we expect that this tension will become more apparent and more important for policy makers and academics to understand.

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Appendix for Predictability Versus Flexibility

Emilie M. Hafner-Burton, Zachary C. Steinert-Threlkeld, David G. Victor

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Descriptive Statistics

Table 1: Summary Statistics

Variable	N	Mean	Std. Dev.	Min	Max
<i>Private</i>	375	.387	.487	0	1
<i>LongLived</i>	370	.527	.500	0	1
<i>Losses_R</i>	364	.997	1.82	0	9
<i>PublicCases_R</i>	364	1.51	2.42	0	13
<i>Reform</i>	375	3.67	3.12	0	11
<i>Additional Facility</i>	375	.093	.291	0	1
<i>Bribery_R</i>	375	.211	.408	0	1
<i>Bribery_C</i>	375	.717	.451	0	1
<i>GDP_R (Log)</i>	373	7.91	1.25	4.70	10.7
<i>GDP_C (Log)</i>	371	10.2	.689	5.57	10.9
<i>Polity_R</i>	361	3.48	6.15	-10	10
<i>Polity_C</i>	372	9.18	3.09	-10	10
<i>FDI_R (Log)</i>	368	.887	1.14	-2.32	3.97

Table 2: Variable Correlations

	<i>Private</i>	<i>LongLived</i>	<i>Losses_R</i>	<i>PublicCases_R</i>	<i>Reform</i>	<i>Additional Facility</i>	<i>Bribery_R</i>	<i>Bribery_C</i>	<i>GDP_R (Log)</i>	<i>GDP_C (Log)</i>	<i>Polity_R</i>	<i>Polity_C</i>	<i>FDI_R (Log)</i>
<i>Private</i>	1.00												
<i>LongLived</i>	.211	1.00											
<i>Losses_R</i>	.150	-.003	1.00										
<i>PublicCases_R</i>	.100	.009	.955	1.00									
<i>Reform</i>	.105	.179	.145	.218	1.00								
<i>Additional Facility</i>	-.206	-.062	-.084	-.052	.047	1.00							
<i>Bribery_R</i>	.003	.067	.470	.473	.013	.061	1.00						
<i>Bribery_C</i>	-.082	.045	.276	.316	.549	.023	.205	1.00					
<i>GDP_R (Log)</i>	.049	.040	.241	.242	.026	.263	.544	.128	1.00				
<i>GDP_C (Log)</i>	.086	.084	.054	.062	.115	-.010	.019	.329	-.005	1.00			
<i>Polity_R</i>	.029	.145	.126	.187	.163	.257	.420	.152	.506	.037	1.00		
<i>Polity_C</i>	-.102	.043	.046	.047	-.059	.053	.064	.309	.046	.521	.037	1.00	
<i>FDI_R (Log)</i>	-.058	.077	-.079	-.007	.313	.069	.050	.234	.172	.020	.037	.521	1.00

Assigning Category Codes

Table 3: From ICSID to Category Code

Case	ICSID Description	Claimant	Coding
ARB/12/12	Nuclear power plant	Vattenfall AB and others	electricity and electric infrastructure
ARB/12/11	Natural gas export	Ampal-American Israel Corporation	hydrocarbon supply and infrastructure
ARB(AF)/12/3	Pulp mill and electric power generation plant	Mercer International, Inc.	electricity and electric infrastructure
CONC(AF)/12/1	Hydrocarbon concession	Hess Equatorial Guinea, Inc.	hydrocarbon supply and infrastructure
CONC(AF)/12/1	Hydrocarbon concession	Tullow Equatorial Guinea Limited	hydrocarbon supply and infrastructure
ARB/12/10	Hydrocarbons exploration agreement	RSM Production Corporation	hydrocarbon supply and infrastructure
ARB/12/9	Food products enterprise	Dan Cake (Portugal) S.A.	agriculture, fisheries, food, drinks and forestry
ARB/12/8	Beverage Production Enterprise	Societe Industrielle des Boissons de Guinee	agriculture, fisheries, food, drinks and forestry
ARB/12/7	Natural Gas Services	Slovak Gas Holding BV	hydrocarbon supply and infrastructure
ARB/12/7	Natural Gas Services	GDF International SAS	hydrocarbon supply and infrastructure
ARB/12/7	Natural Gas Services	E.ON Ruhrgas International GmbH	hydrocarbon supply and infrastructure
ARB/12/6	Construction projects	Sehil Insaat Endustri ve Ticaret	general industry
ARB(AF)/12/2	Construction of housing and sports facilities	Grupo Francisco Hernando Contreras	general industry
ARB(AF)/12/1	Pharmaceutical goods	Apotex Holdings Inc.	general industry
ARB/12/5	Electricity transmission concessions	Elecnor S.A.	electricity and electric infrastructure

ARB/12/5	Electricity transmission concessions	Isolux Corsan Concesiones S.A	electricity and electric infrastructure
ARB/12/4	Concession agreement	Supervision y Control S.A.	general industry
ARB/12/3	Radio broadcasting enterprises	Accession Mezzanine Capital L.P	telcoms, radio and TV
ARB/12/3	Radio broadcasting enterprises	Danubius Kereskedohaz Vagyonkezelezo Zrt.	telcoms, radio and TV
ARB/12/2	Radio broadcasting enterprises	Emmis International Holding B.V.	telcoms, radio and TV
ARB/12/2	Radio broadcasting enterprises	Emmis Radio Operating B.V.	telcoms, radio and TV
ARB/12/2	Radio broadcasting enterprises	MEM Magyar Electronic Media Kereskedelmi Szolgaltato Kft	telcoms, radio and TV
ARB/12/1	Mineral exploration options	Tethyan Copper Company Pty Limited	mining
ARB/11/33	Limestone quarry	Adel A Hamadi Al Tamimi	mining
ARB/11/32	Textile enterprise	Indorama International Finance Limited	general industry
ARB/11/31	Fertilizer enterprise	Gambrinus, Corp.	agriculture, fisheries, food, drinks and forestry
ARB/11/30	Maritime transport services	Hortensia Margarita Shortt	ports and airports
ARB/11/29	Port development project	Getma International and others	ports and airports
ARB/11/28	Residential and commercial construction project	Tulip Real Estate Investment and Development Netherlands B.V.	general infrastructure
ARB/11/27	Dredging operations	Baggerwerken Decloedt En Zoon NV	ports and airports
ARB(AF)/11/4	Telecommunications enterprise	Mobile TeleSystems OJSC	telcoms, radio and TV
ARB/11/26	Not briquetted iron production plant	Tenaris S.A.	mining
ARB/11/26	Not briquetted iron production plant	Talta - Trading e Marketing Sociedade Unipessoal LDA	mining
ARB/11/25	Industrial plants for production and	OI European Group B.V	general industry

	distribution of glass containers		
CONC/11/1	Hydrocarbons exploration and exploitation concession agreement	RSM Production Corporation	hydrocarbon supply and infrastructure
ARB/11/24	Oil storage and distribution project	Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A.	hydrocarbon supply and infrastructure
ARB/11/23	Duty free concessions	Mr. Franck Charles Arif	general infrastructure
ARB/11/22	Resort development	Vigotop Limited	tourism
ARB/11/21	Pier concession agreement	DP World Callao S.R.L	ports and airports
ARB/11/21	Pier concession agreement	P&O Dover (Holding) Limited	ports and airports
ARB/11/21	Pier concession agreement	The Peninsular and Oriental Steam Navigation Company	ports and airports
ARB/11/20	Construction project	Garanti Koza LLP	general industry
ARB/11/19	Construction and operation of fertilizer plant	Koch Minerals Sarl	general industry
ARB/11/19	Construction and operation of fertilizer plant	Koch Nitrogen International Sarl	general industry
ARB/11/18	Gaming industry	Burimi SRL	general industry
ARB/11/18	Gaming industry	Eagle Games SH.A	general industry
ARB/11/17	Property development project	Renee Rose Levy	general infrastructure
ARB/11/17	Property development project	Gremcitel S.A.	general infrastructure
ARB/11/16	Property development projects	Hussain Sajwani	general infrastructure
ARB/11/16	Property development projects	Damac Park Avenue for Real Estate Development S.A.E.	general infrastructure

ARB/11/16	Property development projects	Damac Gamsha Bay for Development S.A.E.	general infrastructure
ARB/11/15	Arts and culture facilities	Ekran Berhad	general infrastructure
ARB/11/14	Mineral exploration operations	Diamond Fields Liberia, Inc	mining
ARB/11/13	Banking enterprise	Rafat Ali Rizvi	financial
ARB/11/12	Construction of an airport terminal	Fraport AG Frankfurt Airport Services Worldwide	ports and airports
ARB/11/11	Ground handling services	AHS Niger	ports and airports
ARB/11/11	Ground handling services	Menzies Middle East and Africa S.A.	ports and airports
ARB(AF)/11/3	Vegetable oil production and processing enterprise	Vincent J. Ryan	agriculture, fisheries, food, drinks and forestry
ARB(AF)/11/3	Vegetable oil production and processing enterprise	Schooner Capital LLC	agriculture, fisheries, food, drinks and forestry
ARB(AF)/11/3	Vegetable oil production and processing enterprise	Atlantic Investment Partners LLC	agriculture, fisheries, food, drinks and forestry
ARB/11/10	Gas compression and injection enterprises	The Williams Companies	hydrocarbon supply and infrastructure
ARB/11/10	Gas compression and injection enterprises	International Holdings B.V.	hydrocarbon supply and infrastructure
ARB/11/10	Gas compression and injection enterprises	WilPro Energy Services (El Furrial) Limited	hydrocarbon supply and infrastructure
ARB/11/10	Gas compression and injection enterprises	WilPro Energy Energy Services (Pigap II) Limited	hydrocarbon supply and infrastructure
ARB/11/9	Electricity transmission agreements	Caraveli Cotaruse Transmissora de Energia S.A.C.	electricity and electric infrastructure
ARB/11/8	Customs clearance services	Agility for Public Warehousing Company K.S.C.	ports and airports

ARB/11/7	Gas pipelines construction and operation management	National Gas S.A.E.	hydrocarbon supply and infrastructure
ARB/11/6	Chemical products enterprise	Bawabet Al Kuwait Holding Company	general industry
ARB(AF)/11/2	Mining company	Crystallex International Corporation	mining
ARB/11/5	Coffee production facilities	Longreef Investments A.V.V.	agriculture, fisheries, food, drinks and forestry
ARB(AF)/11/1	Coal supply agreement	Nova Scotia Power Incorporated	hydrocarbon supply and infrastructure
ARB/11/4	Operation of gaming and entertainment facilities	Club Hotel Loutraki S.A.	general industry
ARB/11/4	Operation of gaming and entertainment facilities	Casinos Austria International Holding GMBG	general industry
ARB/11/3	Waste management services	Accession Eastern Europe Capital AB	general infrastructure
ARB/11/3	Waste management services	Mezzanine Management Sweden AB	general infrastructure
ARB/11/2	Oil exploration and production joint venture	Turkiye Petrolleri Anonim Ortakligi	hydrocarbon supply and infrastructure
ARB/11/1	Mining concession	Highbury International AVV	mining
ARB/11/1	Mining concession	Ramstein Trading Inc.	mining
ARB/10/25	Forestry and timber processing enterprises	Border Timbers Limited	agriculture and forestry
ARB/10/25	Forestry and timber processing enterprises	Border Timbers International (Private) Limited	agriculture, fisheries, food, drinks and forestry
ARB/10/25	Forestry and timber processing enterprises	Hangani Development Co. (Private) Limited	agriculture, fisheries, food, drinks and forestry
ARB/10/24	Design and construction contracts	Ickale Insaat Limited Sirketi	general infrastructure

ARB/10/23	Electricity distribution concession	TECO Guatemala Holdings, LLC	electricity and electric infrastructure
ARB/10/22	Agricultural machinery and equipment enterprise	Omer Dede	agriculture, fisheries, food, drinks and forestry
ARB/10/22	Agricultural machinery and equipment enterprise	Serdar Elhuseyni	agriculture, fisheries, food, drinks and forestry
ARB/10/21	Mining concessions	International Quantum Resources Limited	mining
ARB/10/21	Mining concessions	Frontier SPRL	mining
ARB/10/21	Mining concessions	Compagnie Miniere de Sakania SPRL	mining
ARB/10/20	Power purchase agreement	Standard Chartered Bank (Hong Kong) Limited	mining
ARB(AF)/10/1	blood treatment and processing facilities	David Minnotte	general industry
ARB(AF)/10/1	blood treatment and processing facilities	Robert Lewis	general industry
ARB/10/19	development, operation, and maintenance of an airport	Flughafen Zurich A.G.	ports and airports
ARB/10/19	development, operation, and maintenance of an airport	Gestion e Ingenieria IDC S.A.	ports and airports
ARB/10/18	Gas purchase and sale agreement	Niko Resources (Bangladesh) Ltd.	hydrocarbon supply and infrastructure
ARB/10/17	Banking enterprise	Renee Rose Levy de Levi	financial
ARB/10/16	Power facilities and trading companies	AES Corporation	electricity and electric infrastructure
ARB/10/16	Power facilities and trading companies	Tau Power B.V.	electricity and electric infrastructure
ARB/10/15	Commercial farms	Bernhard von Pezold	agriculture and

			forestry
ARB/10/14	Oil exploration and production	Opic Karimun Corporation	hydrocarbon supply and infrastructure
ARB/10/13	Press distribution and real estate	Hassan Awdi	general industry
ARB/10/13	Press distribution and real estate	Enterprise Business Consultants, Inc.	general industry
ARB/10/13	Press distribution and real estate	Alfa El Corporation	general industry
ARB/10/12	Power purchase agreement	Standard Chartered Bank	electricity and electric infrastructure
ARB/10/11	Petroleum development contract	Niko Resources (Bangladesh) Ltd.	hydrocarbon supply and infrastructure
ARB/10/10	Tea company	Olyana Holdings LLC	agriculture and forestry
ARB/10/9	Oil and gas enterprise	Universal Compression International Holdings, S.L.U	hydrocarbon supply and infrastructure
ARB/10/8	Exploration and exploitation of hydrocarbons	Pan American Energy LLC	hydrocarbon supply and infrastructure
ARB/10/7	Tobacco industry	Philip Morris Brand Sarl	agriculture and forestry
ARB/10/7	Tobacco industry	Philip Morris Products S.A.	agriculture and forestry
ARB/10/7	Tobacco industry	Abal Hermanos S.A.	agriculture and forestry
ARB/10/6	Oil exploration contract	RSM Production Corporation	hydrocarbon supply and infrastructure
ARB/10/6	Oil exploration contract	Rachel S. Grynberg	hydrocarbon supply and infrastructure
ARB/10/6	Oil exploration contract	Stephen M. Grynberg	hydrocarbon supply and infrastructure
ARB/10/6	Oil exploration contract	Miriam Z. Grynberg	hydrocarbon supply and infrastructure
ARB/10/5	Maritime-support services	Tidewater Inc.	ports and airports
ARB/10/5	Maritime-support services	Tidewater Investment SRL	ports and airports

ARB/10/5	Maritime-support services	Tidewater Caribe, C.A.	ports and airports
ARB/10/5	Maritime-support services	Twenty Grand Offshore, L.L.C	ports and airports
ARB/10/5	Maritime-support services	Point Marine, L.L.C.	ports and airports
ARB/10/5	Maritime-support services	Twenty Grand Marine Service, L.L.C.	ports and airports
ARB/10/5	Maritime-support services	Jackson Marine, L.L.C.	ports and airports
ARB/10/5	Maritime-support services	Zapata Gulf Marine Operators, L.L.C	ports and airports
ARB/10/4	Trading company	Antoine Abou Lahoud	general industry
ARB/10/4	Trading company	Leila Bounafeh-Abou Lahoud	general industry
ARB/10/3	Molybdenum	Metal-Tech Ltd	mining
ARB/10/2	Highway construction project	Convial Callao S.A.	roads, railroads and infrastructure
ARB/10/2	Highway construction project	CCI - Compania de Concesiones de Infraestructura S.A.	roads, railroads and infrastructure
ARB/10/1	Construction projects	Kilic Insaat Ithalat Ihracat Sanayi	general industry
ARB/10/1	Construction projects	Ticaret Anonim Sirketi	general industry
ARB/09/23	Construction, management and maintenance of airport facilities	AECON	ports and airports
ARB/09/23	Construction, management and maintenance of airport facilities	Airport Development Corporation	ports and airports
ARB/09/23	Construction, management and maintenance of airport facilities	HAS Development Corporation	ports and airports
ARB/09/23	Construction, management and maintenance of airport facilities	Andrade Gutierrez Concessoes	ports and airports
ARB/09/22	Gas distribution enterprise	Itera International Energy LLC	hydrocarbon supply and infrastructure

ARB/09/22	Gas distribution enterprise	Itera Group NV	hydrocarbon supply and infrastructure
ARB/09/21	Fertilizer plant	UAB "ARVI" ir ko	agriculture, fisheries, food, drinks and forestry
ARB/09/21	Fertilizer plant	UAB "SANITEX"	agriculture, fisheries, food, drinks and forestry
ARB(AF)/09/2	Waste disposal enterprise	Abengoa, S.A.	general infrastructure
ARB(AF)/09/2	Waste disposal enterprise	COFIDES S.A.	general infrastructure
ARB/09/20	Tourism project	Reinhard Hans Unglaube	tourism
ARB/09/19	Mining concession	Carnegie Minerals (Gambia) Limited	mining
ARB/09/18	Electricity generation and distribution operations	Cambodia Power Company	electricity and electric infrastructure
ARB/09/17	Mining concession	Commerce Group Corp.	mining
ARB/09/17	Mining concession	San Sebastian Gold Mines, Inc.	mining
ARB/09/16	Food products company	Swisslion DOO Skopje	agriculture, fisheries, food, drinks and forestry
ARB/09/15	Resort management and operation	H&H Enterprises Investments, Inc.	tourism
ARB/09/14	Exploration and production of liquid hydrocarbons	Maersk Olie	hydrocarbon supply and infrastructure
ARB/09/14	Exploration and production of liquid hydrocarbons	Algeriet A/S	hydrocarbon supply and infrastructure
ARB/09/13	Light rail system	International Company for Railway Systems	roads, railroads and infrastructure
ARB/09/13	Light rail system	Privatization Holding Company	roads, railroads and infrastructure
ARB/09/12	Mining concession	Pac Rim Cayman LLC	mining

ARB/09/11	poultry products	Global Trading Resource Corp	agriculture, fisheries, food, drinks and forestry
ARB/09/11	poultry products	Globex International, Inc.	agriculture, fisheries, food, drinks and forestry
ARB/09/10	Electricity distribution	EVN AG	electricity and electric infrastructure
ARB/09/9	Poultry farm	Adem Dogan	agriculture, fisheries, food, drinks and forestry
ARB/09/8	Banking enterprise	KT Asia Investment Group	financial
ARB/09/7	Operation of a global system for mobile communications (GSM) network	MTN (Dubai) Limited	telcoms, radio and TV
ARB/09/7	Operation of a global system for mobile communications (GSM) network	MTN Yemen	telcoms, radio and TV
ARB/09/6	Power plant construction project	Vattenfall AB	electricity and electric infrastructure
ARB/09/6	Power plant construction project	Vattenfall Europe AG	electricity and electric infrastructure
ARB/09/6	Power plant construction project	Vattenfall Europe Generation AG	electricity and electric infrastructure
ARB/09/5	Electricity distribution concession	Iberdrola Energia, S.A.	electricity and electric infrastructure
ARB/09/4	Highway construction project	Elsamex S.A.	roads, railroads and infrastructure
ARB/09/3	Cement production enterprise	Holcim Limited	general industry
ARB/09/3	Cement production enterprise	Holderfin B.V.	general industry

ARB/09/3	Cement production enterprise	Caricement C.V.	general industry
ARB/09/2	Hedging agreement	Deutsche Bank AG	financial
ARB/09/1	Air Transportation Services	Teinver S.A.	ports and airports
ARB/09/1	Air Transportation Services	Transportes de Cercanias S.A.	ports and airports
ARB/09/1	Air Transportation Services	Autobuses Urbanos del Sur S.A.	ports and airports
ARB/08/20	Telecommunications enterprise	Millicom International Operations B.V.	telcoms, radio and TV
ARB/08/20	Telecommunications enterprise	Sentel GSM S.A.	telcoms, radio and TV
ARB/08/19	Highway construction project	Karmer Marble Tourism Construction Industry	roads, railroads and infrastructure
ARB/08/19	Highway construction project	Commerce Limited Liability Company	roads, railroads and infrastructure
ARB/08/18	Airport construction project	Malicorp Limited	ports and airports
ARB/08/17	Concession regarding two ports	Participaciones Inversiones Portuarias SARL	ports and airports
ARB/08/16	Petrochemical industry	GEA Group Aktiengesellschaft	hydrocarbon supply and infrastructure
ARB/08/15	Cement production enterprise	CEMEX Caracas Investments B.V.	general industry
ARB/08/15	Cement production enterprise	CEMEX Caracas Investments B.V.	general industry
ARB/08/14	Highway construction project	Impregilo S.p.A.	roads, railroads and infrastructure
ARB/08/13	Electricity concession	Alaplil Elektrik B.V.	electricity and electric infrastructure
ARB/08/12	oil exploration and production contract	Caratube International Oil Company LLP	hydrocarbon supply and infrastructure
ARB/08/11	Hotel development project	Bosh International, Inc.	tourism
ARB/08/11	Hotel development project	B&P, LTD Foreign Investments Enterprise	tourism

ARB/08/10	Oil exploration contract	Repsol YPF Ecuador, S.A.	hydrocarbon supply and infrastructure
ARB/08/10	Oil exploration contract	Overseas Petroleum and Investment Corporation	hydrocarbon supply and infrastructure
ARB/08/10	Oil exploration contract	Murphy Ecuador Oil Company Ltd.	hydrocarbon supply and infrastructure
ARB/08/10	Oil exploration contract	CRS Resources (Ecuador) LDC	hydrocarbon supply and infrastructure
ARB/08/9	Debt instruments	Giordano Alpi and others	financial
ARB/08/8	Maritime operations	Immaris Perestroika Sailing Maritime Services GmbH	ports and airports
ARB/08/8	Maritime operations	Windjammer Beteiligungsgesellschaft mbH & Co. KG	ports and airports
ARB/08/8	Maritime operations	Inmaris Windjammer Sailing GmbH i.L.	ports and airports
ARB/08/8	Maritime operations	Inmaris Windjammer Chartering GmbH i.L.	ports and airports
ARB/08/7	gas distribution	Itera International Energy LLC	hydrocarbon supply and infrastructure
ARB/08/7	gas distribution	Itera Group NV	hydrocarbon supply and infrastructure
ARB/08/6	Hydrocarbon concession	Perenco Ecuador Limited	hydrocarbon supply and infrastructure
ARB/08/5	Hydrocarbon concession	Burlington Resources Inc.	hydrocarbon supply and infrastructure
ARB/08/4	Hydrocarbon concession	Murphy Exploration and Production Company International	hydrocarbon supply and infrastructure
ARB/08/3	Telecommunications enterprise	Brandes Investment Partners LP	telcoms, radio and TV
ARB(AF)/08/1	Agriculture enterprises	Quadrant Pacific Growth Fund L.P	agriculture, fisheries, food, drinks and forestry
ARB(AF)/08/1	Agriculture enterprises	Canasco Holdings Inc.	agriculture, fisheries, food, drinks and forestry

ARB/08/2	Waterway construction project	ATA Construction, Industrial, and Trading Company	roads, railroads and transport infrastructure
ARB/08/1	Tourism project	Marion Unglaube	general infrastructure
ARB/07/32	Highway rehabilitation project	Astaldi S.p.A.	roads, railroads and transport infrastructure
ARB(AF)/07/4	Petroleum development projects	Mobil Investments Canada Inc.	hydrocarbon supply and infrastructure
ARB(AF)/07/4	Petroleum development projects	Murphy Oil Corporation	hydrocarbon supply and infrastructure
ARB/07/31	Highway construction project	Hochtief Aktiengesellschaft	roads, railroads and transport infrastructure
ARB/07/30	Oil and gas enterprise	ConocoPhillips Company and others	hydrocarbon supply and infrastructure
ARB/07/29	Service agreement	SGS Societe Generale de Surveillance S.A.	general industry
ARB/07/28	Telecommunications enterprise	E.T.I. Euro Telecom International N.V.	telcoms, radio and TV
ARB/07/27	Oil and gas enterprise	Mobil Corporation	hydrocarbon supply and infrastructure
ARB/07/27	Oil and gas enterprise	Mobil Cerro Negro Holding, Ltd.	hydrocarbon supply and infrastructure
ARB/07/27	Oil and gas enterprise	Mobil Venezolana de Petroleos Holdings, Inc.	hydrocarbon supply and infrastructure
ARB/07/27	Oil and gas enterprise	Mobil Cerro Negro Ltd.	hydrocarbon supply and infrastructure
ARB/07/27	Oil and gas enterprise	Mobil Venezolana de Petroleos, Inc.	hydrocarbon supply and infrastructure
ARB/07/27	Oil and gas enterprise	Venezuela Holdings, B.V.	hydrocarbon supply and infrastructure
ARB/07/26	Water services concession	Urbaser S.A.	general infrastructure
ARB/07/26	Water services concession	Consortio de Aguas Bilbao Bizkaia, Bilbao Biskai Ur Partzuergoa	general infrastructure

ARB/07/25	oil exploration corporation	Trans-Global Petroleum, Inc.	hydrocarbon supply and infrastructure
ARB/07/24	Cocoa production enterprise	Gustav F W Hamester GmbH	agriculture, fisheries, food, drinks and forestry
ARB/07/23	Railroad concession contract	Railroad Development Corporation	ports and airports
CONC/07/1	Log production and processing enterprises	Shareholders of SESAM	agriculture, fisheries, food, drinks and forestry
ARB/07/22	Electricity generation	AES Summit Generation Limited	electricity and electric infrastructure
ARB/07/22	Electricity distribution	AES-Tisza Eromu Kft.	electricity and electric infrastructure
ARB/07/21	Construction contracts	Pantechniki S.A. Contractors & Engineers	general industry
ARB/07/20	Mobile telecommunication services	Saba Fakes	telcoms, radio and TV
ARB/07/19	Electricity generation	Electrabel S.A.	electricity and electric infrastructure
ARB/07/18	Hydrocarbon concession	Shell Nigeria Ultra Deep Limited	hydrocarbon supply and infrastructure
ARB/07/17	Water services concession	Impregilo S.p.A.	general infrastructure
ARB/07/16	Hotel development project	Alpha Projektholding GmbH	general infrastructure
ARB/07/15	Oil and gas distribution enterprise	Ron Fuchs	hydrocarbon supply and infrastructure
ARB/07/14	Exploration and extraction of hydrocarbons	Liman Caspian Oil BV	hydrocarbon supply and infrastructure
ARB/07/14	Exploration and extraction of hydrocarbons	NCL Dutch Investment BV	hydrocarbon supply and infrastructure
ARB/07/13	Ammonia production enterprise	S&T Oil Equipment & Machinery Ltd	general industry

ARB/07/12	Highway construction contract	Toto Costruzioni Generali S.p.A.	roads, railroads and transport infrastructure
ARB/07/11	Cement manufacturing enterprise	ALAS International Baustoffproduktions AG	general industry
ARB/07/10	Tobacco industry	M. Meerapfel Sohne AG	agriculture, fisheries, food, drinks and forestry
ARB/07/9	Service agreement	Bureau Veritas, Inspection, Valuation, Assessment and Control (BIVAC BV)	general industry
ARB/07/8	Debt instruments	Giovanni Alemanni and others	financial
ARB(AF)/07/3	Capital contributions in an enterprise	Alasdair Ross Anderson and others	financial
ARB(AF)/07/2	Electricity concessions	Europe Cement Investment and Trade S.A.	electricity and electric infrastructure
ARB/07/7	Mining enterprise	Global Gold Mining LLC	mining
ARB/07/6	Fish flour production enterprise	Tza Yap Shum	agriculture, fisheries, food, drinks and forestry
ARB/07/5	Debt instruments	Abaclat and others	financial
ARB/07/4	Hydrocarbon rights	Eni Dacion B.V.	hydrocarbon supply and infrastructure
ARB/07/3	Coal mining contract	Government of the Province of East Kalimantan	hydrocarbon supply and infrastructure
ARB/07/2	Petroleum exploration and exploitation contract	RSM Production Corporation	hydrocarbon supply and infrastructure
ARB/07/1	Aluminum and alumina production company	Fondel Metal Partipations B.V.	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Piero Foresti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Ida Laura de Carli	mining
ARB(AF)/07/1	Quarrying and	Dora Foresti	mining

	trading enterprise		
ARB(AF)/07/1	Quarrying and trading enterprise	Maria Teresa Suardo	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Paola Suardo	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Antonio Foresti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Luigi Foresti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Massimiliano Foresti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Franca Conti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Daniela Conti	mining
ARB(AF)/07/1	Quarrying and trading enterprise	Finstone s.a.r.l	mining
ARB/06/21	Hydrocarbon concession	City Oriente Limited	hydrocarbon supply and infrastructure
ARB/06/20	Gold extraction enterprise	Newmont USA	mining
ARB/06/20	Gold extraction enterprise	Newmont (Uzbekistan) Limited	mining
ARB/06/19	Electricity power generation project	Nations Energy, Inc	electricity and electric infrastructure
ARB/06/19	Electricity power generation project	Electric Machinery Enterprises Inc.	electricity and electric infrastructure
ARB/06/19	Electricity power generation project	Jaime Jurado	electricity and electric infrastructure
ARB/06/18	Radio broadcasting	Joseph Charles Lemire	telcoms, radio and TV
ARB(AF)/06/2	Electricity concessions	Cementownia "Nowa Huta" S.A.	electricity and electric infrastructure
ARB/06/17	Oil refinery expansion	Tecnicas Reunidas, S.A.	hydrocarbon supply and infrastructure
ARB/06/17	Oil refinery expansion	Eurocontrol, S.A.	hydrocarbon supply and infrastructure

ARB/06/16	Electricity concession	Barmek Holding A.S.	electricity and electric infrastructure
ARB/06/15	Oil and gas distribution, trade, storage and transportation enterprise	Azpetrol International Holdings B.V.	hydrocarbon supply and infrastructure
ARB/06/15	Oil and gas distribution, trade, storage and transportation enterprise	Azpetrol Group B.V.	hydrocarbon supply and infrastructure
ARB/06/15	Oil and gas distribution, trade, storage and transportation enterprise	Azpetrol Oil Services Group B.V.	hydrocarbon supply and infrastructure
ARB/06/14	Trademarks	Shell Brands International AG	hydrocarbon supply and infrastructure
ARB/06/14	Trademarks	Shell Nicaragua S.A.	hydrocarbon supply and infrastructure
ARB/06/13	Electricity generation and transmission	Aguaytia Energy, LLC	electricity and electric infrastructure
ARB/06/12	Cement production and distribution	Scancem International ANS	general industry
ARB/06/11	Hydrocarbon concession	Occidental Petroleum Corporation	hydrocarbon supply and infrastructure
ARB/06/11	Hydrocarbon concession	Occidental Exploration and Production Company	hydrocarbon supply and infrastructure
ARB/06/10	Exploration, development and production of natural gas	Chevron Bangladesh Block Twelve, Ltd.	hydrocarbon supply and infrastructure
ARB/06/10	Exploration, development and production of natural gas	Chevron Bangladesh Blocks Thirteena nd Fourteen, Ltd	hydrocarbon supply and infrastructure
ARB/06/09	Mineral water spring project	Branimir Mensik	general industry

ARB/06/8	Electricity generation and distribution concessions	Libananco Holdings Co. Limited	electricity and electric infrastructure
ARB(AF)/06/1	Hotel operation project	Sistem Muhendislik Insaat Sanayi ve Ticaret A.S.	general infrastructure
ARB/06/7	Electricity concession	Togo Electricite	electricity and electric infrastructure
ARB/06/7	Electricity concession	GDF-Suez Energie Services	electricity and electric infrastructure
ARB/06/6	railroad enterprise	Rail World Estonia LLC	roads, railroads and transport infrastructure
ARB/06/6	railroad enterprise	Railroad Development Corporation	roads, railroads and transport infrastructure
ARB/06/6	railroad enterprise	EEIF Rail BV	roads, railroads and transport infrastructure
ARB/06/5	Metal industry project	Phoenix Action Ltd.	mining
ARB/06/4	Farming enterprise	Vestey Group Ltd.	agriculture, fisheries, food, drinks and forestry
ARB/06/3	Oil refinery	Rompetrol Group N.V.	hydrocarbon supply and infrastructure
ARB/06/2	Mining concession	Quiborax S.A.	mining
ARB/06/2	Mining concession	Non-Metallic Minerals S.A.	mining
ARB/06/2	Mining concession	Allan Fosk Kaplun	mining
ARB/06/1	Food trading company	Spyridon Roussalis	agriculture, fisheries, food, drinks and forestry
ARB/05/24	Nuclear power plant	Hrvatska Elektroprivreda d.d.	electricity and electric infrastructure
ARB/05/23	Steel industry project	Ares International S.r.l.	general industry
ARB/05/23	Steel industry project	MetalGeo S.r.l.	general industry

ARB/05/22	Water and sewer services concession agreement	Biwater Gauff (Tanzania) Limited	general infrastructure
ARB/05/21	Construction contracts	African Holding Company of America, Inc.	general industry
ARB/05/21	Construction contracts	Societe Africaine de Construction au Congo S.A.R.L.	general industry
ARB/05/20	Food products enterprise	Ioan Micula	agriculture, fisheries, food, drinks and forestry
ARB/05/20	Food products enterprise	Viorel Micula	agriculture, fisheries, food, drinks and forestry
ARB/05/20	Food products enterprise	S.C. European Food S.A.	agriculture, fisheries, food, drinks and forestry
ARB/05/20	Food products enterprise	S.C. Starmill S.R.L.	agriculture, fisheries, food, drinks and forestry
ARB/05/20	Food products enterprise	S.C. Multipack S.R.L.	agriculture, fisheries, food, drinks and forestry
ARB/05/19	Hotel lease and development agreements	Helnan International Hotels A/S	tourism
ARB/05/18	Oil and gas distribution enterprise	Ioannis Kardassopoulos	hydrocarbon supply and infrastructure
ARB/05/17	Road construction contract	Desert Line Projects LLC	ports and airports
ARB/05/16	Telecommunications enterprise	Rumeli Telekom A.S.	telcoms, radio and TV
ARB/05/16	Telecommunications enterprise	Telsim Mobil Telekomunikasyon Hizmetleri A.S.	telcoms, radio and TV
ARB(AF)/05/2	Soft drink sweetener production enterprise	Cargill, Incorporated	agriculture, fisheries, food and forestry
ARB/05/15	Resort development	Waguieh Elie George Siag	tourism

ARB/05/15	Resort development	Clorinda Vecchi	tourism
ARB/05/14	Oil exploration contract	RSM Production Corporation	hydrocarbon supply and infrastructure
ARB/05/13	Duty free services	EDF (Services) Limited	ports and airports
ARB/05/12	Electricity enterprise	Noble Energy Inc.	electricity and electric infrastructure
ARB/05/12	Electricity enterprise	MachalaPower Cia. Ltd.	electricity and electric infrastructure
ARB(AF)/05/1	Agricultural enterprises	Bayview Irrigation District and others	agriculture, fisheries, food and forestry
ARB/05/11	Collection contract	Asset Recovery Trust S.A.	financial
ARB/05/10	Salvage contract	Malaysian Historical Salvors, SDN, BHD	general industry
ARB/05/9	Electricity enterprise	Empresa Electrica del Ecuador, Inc. (EMELEC)	electricity and electric infrastructure
CONC/05/1	Electricity concession	Togo Electricite	electricity and electric infrastructure
ARB/05/8	Public parking concession	Parkerings-Compagniet AS	general infrastructure
ARB/05/7	Gas pipeline project	Saipem S.p.A.	hydrocarbon supply and infrastructure
ARB/05/6	Commercial farms	Bernardus Henricus Funnekotter	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Hermannes van Duren	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Margareta van Duren	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Dicky Roelanda Breytenbach	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Romelia Gwendolyn Fisher	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Max Willem Arthur Graaf van Rechteren Limpurg	agriculture, fisheries, food and forestry

ARB/05/6	Commercial farms	Rolf Jan Philip Walraven	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Wessel Johannes Weller	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Loekie Weller	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Johan Pieter Weller	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Lion Hellmut Benjamins	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Carel Frederik des Tombe	agriculture, fisheries, food and forestry
ARB/05/6	Commercial farms	Erica Hansen	agriculture, fisheries, food and forestry
ARB/05/5	Telecommunications concession	TSA Spectrum de Argentina, S.A.	telcoms, radio and TV
ARB/05/4	Debt instruments	I&I Beheer B.V.	financial
ARB/05/3	Construction of a dam	LESI, S.p.A.	general infrastructure
ARB/05/3	Construction of a dam	Astaldi, S.p.A.	general infrastructure
ARB/05/2	Electricity distribution concessions	Compania General de Electricidad S.A.	electricity and electric infrastructure
ARB/05/2	Electricity distribution concessions	CGE Argentina S.A.	electricity and electric infrastructure
ARB/05/1	Leasing and financial services	Daimler Financial Services AG	financial
ARB/04/21	Cellular telecommunications network	Motorola Credit Corporation, Inc	telcoms, radio and TV
ARB/04/20	Financial reinsurance services	RGA Reinsurance Company	financial
ARB(AF)/04/6	Gold and copper mining project	Vannessa Ventures Ltd.	mining
ARB/04/19	Power generation facilities	Duke Energy Electroquil Partners	electricity and electric infrastructure

ARB/04/19	Power generation facilities	Electroquil S.A.	electricity and electric infrastructure
ARB(AF)/04/5	Soft drink sweetener production enterprise	Archer Daniels Midland Company	agriculture, fisheries, food and forestry
ARB(AF)/04/5	Soft drink sweetener production enterprise	Tate & Lyle Ingredients Americas, Inc.	agriculture, fisheries, food and forestry
ARB(AF)/04/4	Concession agreement to operate the National Registry of Motor Vehicles	Talsud, S.A.	general infrastructure
ARB(AF)/04/3	Concession agreement to operate the National Registry of Motor Vehicles	Gemplus S.A.	general infrastructure
ARB(AF)/04/3	Concession agreement to operate the National Registry of Motor Vehicles	SLP S.A.	general infrastructure
ARB(AF)/04/3	Concession agreement to operate the National Registry of Motor Vehicles	Gemplus Industrial S.A. de C.V.	general infrastructure
ARB/04/18	Telecommunications concession	France Telecom S.A.	telcoms, radio and TV
ARB/04/17	Brewery	Interbrew Central European Holding B.V.	agriculture, fisheries, food, drinks and forestry
ARB/04/16	Gas production concessions	Mobil Exploration and Development Inc. Suc. Argentina	hydrocarbon supply and infrastructure
ARB/04/16	Gas production concessions	Mobil Argentina S.A.	hydrocarbon supply and infrastructure
ARB/04/15	Telecommunications concession	Telenor Mobile Communications AS	telcoms, radio and TV

ARB/04/14	Gas and oil production	Wintershall Aktiengesellschaft	hydrocarbon supply and infrastructure
ARB(AF)/04/2	Isoglucose production	Cargill, Incorporated	agriculture, fisheries, food, drinks and forestry
ARB/04/13	Dredging project	Jan de Nul N.V.	ports and airports
ARB/04/13	Dredging project	Dredging International N.V.	ports and airports
ARB/04/12	Acquisition of shares	ABCI Investments N.V.	financial
ARB/04/11	Mining concession	Russell Resources International Limited and others	mining
ARB/04/10	Thermal energy station project	Alstom Power Italia SpA	electricity and electric infrastructure
ARB/04/10	Thermal energy station project	Alstom SpA	electricity and electric infrastructure
ARB/04/9	Leasing enterprise	CIT Group Inc.	financial
ARB/04/8	Hydrocarbon concession and electricity generation project	BP America Production Company	hydrocarbon supply and infrastructure
ARB/04/8	Hydrocarbon concession and electricity generation project	Pan American Sur SRL	hydrocarbon supply and infrastructure
ARB/04/8	Hydrocarbon concession and electricity generation project	Pan American Fueguina SRL	hydrocarbon supply and infrastructure
ARB/04/8	Hydrocarbon concession and electricity generation project	Pan American Continental SRL	hydrocarbon supply and infrastructure
ARB/04/7	Fisheries company	Sociedad Anónima Eduardo Vieira	agriculture, fisheries, food, drinks and forestry
ARB/04/6	Debt instruments	OKO Pankki Oyj	financial
ARB/04/6	Debt instruments	VTB Bank (Deutschland) AG	financial
ARB/04/6	Debt instruments	Sampo Bank PLC	financial

ARB/04/5	Railway concession agreement	Compagnie d'Exploitation du Chemin de Fer Transgabonais	roads, railroads and transport infrastructure
ARB/04/4	Water and sewer services concession agreement	SAUR International	general infrastructure
ARB/04/3	Cement production enterprise	Cemex Asia Holdings Ltd	general industry
ARB/04/2	Sunflower oil joint venture	Western NIS Enterprise Fund	agriculture, fisheries, food, drinks and forestry
ARB(AF)/04/1	Soft drink sweetener production enterprise	Corn Products International, Inc.	agriculture, fisheries, food, drinks and forestry
ARB/04/1	Gas production and distribution/power generation project	Total S.A.	hydrocarbon supply and infrastructure
CONC/03/1	Oil exploration concession	TG World Petroleum Limited	hydrocarbon supply and infrastructure
ARB/03/30	Water and sewer services concession agreement	Azurix Corp.	general infrastructure
ARB/03/29	Highway construction contract	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.	roads, railroads and transport infrastructure
ARB/03/28	Power generation project	Duke Energy International Peru Investments No. 1 Ltd.	electricity and electric infrastructure
ARB/03/27	Information storage and management project	Unisys Corporation	general industry
ARB/03/26	Motor vehicle inspection facility	Inceysa Vallisoletana S.L.	general infrastructure
ARB/03/25	Construction of an airport terminal	Fraport AG Frankfurt Airport Services Worldwide	ports and airports
ARB/03/24	Oil refinery	Plama Consortium Limited	hydrocarbon supply and infrastructure
ARB/03/23	Electricity distribution	EDF International S.A.	electricity and electric

	enterprise		infrastructure
ARB/03/23	Electricity distribution enterprise	SAUR International S.A.	electricity and electric infrastructure
ARB/03/23	Electricity distribution enterprise	Leon Participaciones Argentinas S.A.	electricity and electric infrastructure
ARB/03/22	Electricity distribution enterprise	Electricidad Argentina S.A.	electricity and electric infrastructure
ARB/03/22	Electricity distribution enterprise	EDF International S.A.	electricity and electric infrastructure
ARB/03/21	Electricity distribution enterprise	Enersis S.A. and others	electricity and electric infrastructure
ARB/03/20	Telecommunications enterprise	Telefonica S.A	telcoms, radio and TV
ARB/03/19	Water services concession	Vivendi Universal S.A	general infrastructure
ARB/03/19	Water services concession	Suez	general infrastructure
ARB/03/19	Water services concession	Sociedad General de Aguas de Barcelona S.A.	general infrastructure
ARB/03/18	Water services concession	Aguas Cordobesas S.A.	general infrastructure
ARB/03/18	Water services concession	Suez	general infrastructure
ARB/03/18	Water services concession	Sociedad General de Aguas de Barcelona S.A.	general infrastructure
ARB/03/17	Water services concession	Suez	general infrastructure
ARB/03/17	Water services concession	Sociedad General de Aguas de Barcelona S.A.	general infrastructure
ARB/03/17	Water services concession	Interagua Servicios Integrales de Agua S.A.	general infrastructure
ARB/03/16	Airport project	ADC Affiliate Limited	ports and airports
ARB/03/16	Airport project	ADC & ADMC Management Limited	ports and airports
ARB/03/15	Hydrocarbon and electricity concessions	El Paso Energy International Company	hydrocarbon supply and infrastructure

ARB/03/14	Diamond mining concessions	Miminco LLC and others	mining
ARB/03/13	Hydrocarbon and electricity concessions	Pan American Energy LLC	hydrocarbon supply and infrastructure
ARB/03/13	Hydrocarbon and electricity concessions	BP Argentina Exploration Company	hydrocarbon supply and infrastructure
ARB/03/12	Hydrocarbon and electricity concessions	Pioneer Natural Resources Company	hydrocarbon supply and infrastructure
ARB/03/12	Hydrocarbon and electricity concessions	Pioneer Natural Resources (Argentina) S.A.	hydrocarbon supply and infrastructure
ARB/03/12	Hydrocarbon and electricity concessions	Pioneer Natural Resources (Tierra del Fuego) S.A.	hydrocarbon supply and infrastructure
ARB/03/11	Phosphate mining project	Joy Mining Machinery Limited	mining
ARB/03/10	Gas supply and distribution enterprise	Gas Natural SDG, S.A.	hydrocarbon supply and infrastructure
ARB/03/9	Gas supply and distribution enterprise	Continental Casualty Company	hydrocarbon supply and infrastructure
ARB/03/8	Construction of a dam	Consortium Groupement L.E.S.I. - DIPENTA	general infrastructure
ARB/03/7	Electricity distribution and transportation enterprise	Camuzzi International S.A.	electricity and electric infrastructure
ARB/03/6	Electric power generation project	M.C.I. Power Group, L.C.	electricity and electric infrastructure
ARB/03/6	Electric power generation project	New Turbine, Inc.	electricity and electric infrastructure
ARB/03/5	Motor vehicle enterprise	Metalpar S.A.	general infrastructure
ARB/03/5	Motor vehicle enterprise	Buen Aire S.A.	general infrastructure
ARB/03/4	Pasta factory	Empresas Lucchetti, S.A.	agriculture, fisheries, food, drinks and forestry

ARB/03/4	Pasta factory	Lucchetti Peru, S.A.	agriculture, fisheries, food, drinks and forestry
ARB/03/3	Hydropower project	Impregilo S.p.A.	electricity and electric infrastructure
ARB/03/2	Gas supply and distribution enterprise	Camuzzi International S.A.	hydrocarbon supply and infrastructure
ARB/03/1	Construction of university facilities	Ed. Zublin AG	general infrastructure
ARB/02/18	Printing enterprise	Tokios Tokelès	general industry
ARB/02/17	Electricity generation and distribution operations	AES Corporation	electricity and electric infrastructure
ARB/02/16	Gas supply and distribution enterprise	Sempra Energy International	hydrocarbon supply and infrastructure
ARB/02/15	Textile enterprise	Ahmonseto, Inc.	general industry
ARB/02/15	Textile enterprise	E&D Industrial California Overseas Company of America	general industry
ARB/02/15	Textile enterprise	A. BMH & Co., Inc.	general industry
ARB/02/15	Textile enterprise	The Family	general industry
ARB/02/14	Debt instruments	CDC Group plc	financial
ARB/02/13	Dam construction project	Salini Costruttori S.p.A.	general infrastructure
ARB/02/13	Dam construction project	Italstrade S.p.A.	general infrastructure
ARB/02/12	Waterway construction project	JacobsGibb Limited	roads, railroads and transport infrastructure
ARB/02/11	Energy enterprise	Enrho St Limited	electricity and electric infrastructure
ARB/02/10	Informatic services contract	IBM World Trade Corp.	general industry
ARB/02/9	cotton processing and trading	Champion Trading Company	agriculture, fisheries, food, drinks and forestry

ARB/02/9	cotton processing and trading	Ameritrade International, Inc.	agriculture, fisheries, food, drinks and forestry
ARB/02/9	cotton processing and trading	James T. Wahba	agriculture, fisheries, food, drinks and forestry
ARB/02/9	cotton processing and trading	John B. Wahba	agriculture, fisheries, food, drinks and forestry
ARB/02/9	cotton processing and trading	Timothy T. Wahba	agriculture, fisheries, food, drinks and forestry
ARB/02/8	Informatic services contract	Siemens A.G.	general industry
ARB/02/7	Concession agreement regarding a port	Hussein Nuaman Soufraki	ports and airports
ARB/02/6	Service agreement	SGS Societe Generale de Surveillance S.A.	general industry
ARB/02/5	Electric power generating station project	PSEG Global Inc.	electricity and electric infrastructure
ARB/02/5	Electric power generating station project	North American Coal Corporation	electricity and electric infrastructure
ARB/02/5	Electric power generating station project	Konya Ilgin Elektrik Uretim ve Ticaret Limited Sirketi	electricity and electric infrastructure
ARB/02/4	Cement enterprise	Lafarge	general industry
ARB/02/3	Water and sewer services concession	Aguas del Tunari S.A.	general infrastructure
ARB/02/2	Highway construction concession	Impregilo S.p.A.	roads, railroads and transport infrastructure
ARB/02/1	Gas distribution enterprise	LG&E Energy Corp.	hydrocarbon supply and infrastructure
ARB/02/1	Gas distribution enterprise	LG&E Capital Corp.	hydrocarbon supply and infrastructure
ARB/02/1	Gas distribution enterprise	LG&E International Inc.	hydrocarbon supply and infrastructure
ARB(AF)/02/1	Debt instruments	Fireman's Fund	financial

		Insurance Company	
ARB/01/14	Oil and gas development contract	F-W Oil Interests, Inc.	hydrocarbon supply and infrastructure
ARB/01/13	Service agreement	SGS Societe Generale de Surveillance S.A.	general industry
ARB/01/12	Water and sewer services concession agreement	Azurix Corp.	general infrastructure
ARB/01/11	Stock purchase agreement	Noble Ventures, Inc.	financial
ARB/01/10	Oil exploration contract	Repsol YPF Ecuador S.A.	hydrocarbon supply and infrastructure
ARB/01/9	Debt instruments	Booker plc	financial
ARB/01/8	Gas transmission	CMS Gas Transmission Company	hydrocarbon supply and infrastructure
ARB/01/7	Construction of residential and commercial complex	MTD Equity Sdn. Bhd.	general infrastructure
ARB/01/7	Construction of residential and commercial complex	MTD Chile S.A.	general infrastructure
ARB/01/6	construction	AIG Capital Partners, Inc.	general industry
ARB/01/6	construction	CJSC Tema Real Estate Company	general industry
ARB/01/5	Gold mining concession	Societe d'Exploitation des Mines d'Or de Sadiola S.A.	mining
ARB/01/4	Power purchase and sale agreement	AES Summit Generation Limited	electricity and electric infrastructure
ARB/01/03	natural gas transportation	Enron Creditors Recovery Corporation	hydrocarbon supply and infrastructure
ARB/01/03	natural gas transportation	Ponderosa Assets, L.P	hydrocarbon supply and infrastructure
ARB/01/2	Mining, banking, and service enterprises	Antoine Goetz and others	mining
ARB/01/1	Construction of a	Impregilo, S.p.A	other

	mosque		
ARB/01/1	Construction of a mosque	Rizzani De Eccher S.p.A.	other
ARB/00/9	Construction of an office building	Generation Ukraine, Inc.	general industry
ARB(AF)/00/3	Waste disposal enterprise	Waste Management Inc.	general infrastructure
ARB(AF)/00/2	Waste disposal enterprise	Tecnicas Medioambientales Tecmed, S.A.	general infrastructure
ARB(AF)/00/1	Highway construction project	ADF Group Inc.	roads, railroads and transport infrastructure
ARB/00/8	Cobalt and copper mining concessions	Ridgepoint Overseas Developments, Ltd.	mining
ARB/00/7	Duty free concession	World Duty Free Company Limited	ports and airports
ARB/00/6	Construction of the section of a highway	Consortium R.F.C.C.	roads, railroads and transport infrastructure
ARB/00/5	Contract for the construction of a highway system	Autopista Concesionada de Venezuela, C.A.	roads, railroads and transport infrastructure
ARB/00/4	Construction of the section of a highway	Salini Costruttori S.p.A.	roads, railroads and transport infrastructure
ARB/00/4	Construction of the section of a highway	Italstrade S.p.A.	roads, railroads and transport infrastructure
ARB/00/3	Contract for the construction and modernization of penitentiaries	GRAD Associates, P.A.	general infrastructure
ARB/00/2	Power project	Mihaly International Corporation	electricity and electric infrastructure
ARB/00/1	Rehabilitation of a hydropower plant	Zhinvali Development Ltd.	electricity and electric infrastructure
ARB/99/8	Highway rehabilitation contract	Astaldi, S.p.A.	roads, railroads and transport infrastructure
ARB/99/8	Highway rehabilitation contract	Columbus Latinoamericana de Construcciones S.A.	roads, railroads and transport infrastructure

ARB/99/7	Law firm	Patrick Mitchell	general industry
ARB/99/6	Cement distribution enterprise	Middle East Cement Shipping and Handling Co. S.A.	general industry
ARB(AF)/99/2	Commercial real estate development	Mondev International Ltd.	general industry
ARB/99/5	Groundnut enterprise	Alimenta S.A.	agriculture, fisheries, food, drinks and forestry
ARB/99/4	Hydroelectric power concession	Empresa Nacional de Electricidad S.A.	electricity and electric infrastructure
ARB(AF)/99/1	Foreign trade enterprise	Marvin Roy Feldman Karpa	financial
ARB/99/3	Company shareholding	Philippe Gruslin	financial
ARB/99/2	Banking enterprise	Alex Genin	financial
ARB/99/2	Banking enterprise	Eastern Credit Limited, Inc.	financial
ARB/99/2	Banking enterprise	A.S. Baltoil	financial
ARB/99/1	Petroleum exploration and production venture	Mobil Argentina S.A.	hydrocarbon supply and infrastructure
ARB/98/8	Power purchase agreement	Tanzania Electric Supply Company Limited	electricity and electric infrastructure
ARB/98/7	Gold mining concessions	Banro American Resources, Inc.	mining
ARB/98/7	Gold mining concessions	Societe Aurifere du Kivu et du Maniema S.A.R.L.	mining
ARB/(AF)/98/3	Funeral home and insurance enterprises	The Loewen Group, Inc.	general industry
ARB/(AF)/98/3	Funeral home and insurance enterprises	Raymond L. Lowen	general industry
ARB(AF)/98/2	Waste disposal enterprise	Waste Management Inc.	general infrastructure
ARB/98/6	Gold mining project	Compagnie Miniere Internationale Or S.A.	mining
ARB/98/5	Food products enterprise	Eudoro A. Olguin	agriculture, fisheries, food, drinks and forestry

ARB/98/4	Hotel lease and development agreements	Wena Hotels Limited	tourism
ARB/98/3	Maritime registry	International Trust Company of Liberia	ports and airports
ARB/98/2	Publishing enterprise	Victor Pey Casado	general industry
ARB/98/2	Publishing enterprise	President Allende Foundation	general industry
ARB/98/1	Electricity distribution and sale concession	Houston Industries Energy, Inc. and others	electricity and electric infrastructure
ARB(AF)/98/1	Radio broadcasting enterprise	Joseph C. Lemire	telcoms, radio and TV
ARB/97/8	Textile industry enterprise	Compagnie Francaise pour le Developpement des Fibres Textiles	general industry
ARB/97/7	Chemical products enterprise	Emilio Agustin Affezini	general industry
ARB/97/6	Port terminal concession agreement	Lancon International, Inc.	ports and airports
ARB/97/5	Electricity enterprise	WRB Enterprises	electricity and electric infrastructure
ARB/97/5	Electricity enterprise	Grenada Private Power Limited	electricity and electric infrastructure
ARB/97/4	Debt instruments	Ceskoslovenska obchodni banka, a.s.	financial
ARB/(AF)/97/2	Waste disposal enterprise	Robert Azinian	general infrastructure
ARB/(AF)/97/2	Waste disposal enterprise	Kenneth Davitian	general infrastructure
ARB/(AF)/97/2	Waste disposal enterprise	Ellen Baca	general infrastructure
ARB/97/3	Water and sewer services concession agreement	Compania de Aguas del Aconquija S.A.	general infrastructure
ARB/97/3	Water and sewer services concession agreement	Vivendi Universal S.A	general infrastructure
ARB/97/2	Petroleum exploration and exploitation	Societe Kufpec (Congo) Limited	hydrocarbon supply and infrastructure

	agreement		
ARB/97/1	Gold mining operation	Societe d'Investigation de Recherche et d'Exploitation Miniere	mining
ARB(AF)/97/1	Waste disposal enterprise	Metalclad Corporation	general infrastructure
ARB/96/3	Debt instruments	Fedax N.V.	financial
ARB/96/2	Mining concession agreement	Misima Mines Pty. Ltd.	mining
ARB/96/1	Valuation of land holding	Compania del Desarrollo de Santa Elena S.V.	financial
ARB/95/3	Mining enterprise	Antoine Goetz	mining
ARB/95/2	Cable television franchise	Cable Television of Nevis, Ltd	telcoms, radio and TV
ARB/95/2	Cable television franchise	Cable Television of Nevis Holdings, Ltd.	telcoms, radio and TV
ARB/95/1	Tobacco manufacturing and warehousing	Leaf Tobacco A. Michaelides S.A.	agriculture, fisheries, food, drinks and forestry
ARB/95/1	Tobacco manufacturing and warehousing	Greek-Albanian Leaf Tobacco & Co. S.A.	agriculture, fisheries, food, drinks and forestry
ARB/94/2	Agricultural enterprise	Tradex Hellas S.A.	agriculture, fisheries, food, drinks and forestry
CONC/94/1	Textile enterprise	SEDITEX Engineering Beratungsgesellschaft fur die Textilindustrie m.b.H.	general industry
ARB/94/1	Construction enterprise	Philippe Gruslin	general industry
ARB/93/1	Manufacturing and trading enterprise	American Manufacturing and Trading, Inc.	general industry
ARB/92/2	Oil exploration and development	Scimitar Exploration Limited	hydrocarbon supply and infrastructure
ARB/92/1	Salt mining operation	Vacuum Salt Products Ltd.	mining
ARB/89/1	Bank branch operation	Manufacturers Hanover Trust Company	financial

ARB/87/4	Petroleum concession	Occidental of Pakistan, Inc.	hydrocarbon supply and infrastructure
ARB/87/3	Shrimp farming joint venture	Asian Agricultural Products Limited	agriculture, fisheries, food, drinks and forestry
ARB/87/2	Synthetic fuels project	Mobil Oil Corporation	hydrocarbon supply and infrastructure
ARB/87/2	Synthetic fuels project	Mobil Petroleum Company Inc.	hydrocarbon supply and infrastructure
ARB/87/2	Synthetic fuels project	Mobil Oil New Zealand Limited	hydrocarbon supply and infrastructure
ARB/87/1	Restructuring of an administrative and residential complex	Societe d'Etudes de Travaux et de Gestion SETIMEG S.A.	general industry
ARB/86/1	Tourism and holiday resort projects	Ghaith R. Pharaon	tourism
ARB/84/4	Bauxite transportation joint venture	Maritime International Nominees Establishment	mining
ARB/84/3	Tourism development project	Southern Pacific Properties (Middle East) Limited	tourism
ARB/84/2	Technical and licensing agreements for the production of weapons	Colt Industries Operating Corporation	general industry
ARB/84/1	Contract for the conversion, equipping, and operation of fishing vessels	Atlantic Triton Company Limited	agriculture, fisheries, food, drinks and forestry
CONC/83/1	Oil exploitation and exploration	Tesoro Petroleum Corporation	hydrocarbon supply and infrastructure
ARB/83/2	Forestry concession	Liberian Eastern Timber Corporation	agriculture, fisheries, food, drinks and forestry
ARB/83/1	Aluminium smelter	Swiss Aluminium Limited	mining
ARB/83/1	Aluminium smelter	Icelandic Aluminium	mining

		Company Limited	
ARB/82/1	Construction of low-income housing projects	Societe Ouest Africaine des Betons Industriels	general industry
CONC/82/1	Textile enterprise	SEDITEX Engineering Beratungsgesellschaft fur die Textilindustrie m.b.H.	general industry
ARB/81/2	Construction and operation of a fertilizer factory	Klockner Industrie-Anlagen GmbH	general industry
ARB/81/2	Construction and operation of a fertilizer factory	Klockner Belge SA	general industry
ARB/81/2	Construction and operation of a fertilizer factory	Klocker Handelsmaatschappij BV	general industry
ARB/81/1	Construction and operation of a hotel	Amco Asia Corporation	tourism
ARB/81/1	Construction and operation of a hotel	Pan American Development Limited	tourism
ARB/81/1	Construction and operation of a hotel	PT Amco Indonesia	tourism
ARB/78/1	Production and marketing of liquefied natural gas	Guadalupe Gas Products Corporation	hydrocarbon supply and infrastructure
ARB/77/2	Manufacture of plastic bottles	S.A.R.L. Benvenuti & Bonfant	general industry
ARB/77/1	Oil products distribution venture	AGIP S.p.A.	hydrocarbon supply and infrastructure
ARB/76/1	Construction of a hospital maternity ward	Gabon	general infrastructure
ARB/74/4	Bauxite mining	Reynolds Jamaica Mines Limited	mining
ARB/74/4	Bauxite mining	Reynolds Metals Company	mining
ARB/74/3	Bauxite mining	Kaiser Bauxite Company	mining
ARB/74/2	Bauxite mining	Alcoa Minerals of Jamaica, Inc.	mining
ARB/74/1	Production of fibers and textiles	Adriano Gardella S.p.A.	general industry

ARB/72/1	Joint venture to build and operate hotels	Holiday Inns S.A. and others	tourism
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Coding Long Lived

We determined whether a claimant is in a long-lived industry based upon the coding we assigned from ICSID's description of industry. A long-lived industry is one in which the time horizon for the investment to be substantially profitable is relatively long (a decade or longer) and for which the firm cannot readily enter or exit from its investment. The assignment of *LongLived* (1, 0) was done by David Victor based on extensive experience analyzing actual investments in most of these industries. The category includes investments in the fields of electricity, hydrocarbons, mining, ports and airports and roads, railroads and transport infrastructure. We exclude telecommunication investment from *LongLived* because most of those investments were for equipment and wireless systems that, unlike wired telecoms infrastructures, have much shorter time horizons.

Our coding here aligns with the illustrations of investments that have inspired the theory and practical policy concerns surrounding the "obsolescing bargain" described in the main paper.. As a legal matter, many investments of this type are managed as concessions precisely because they are long-lived and thus exposed to the vagaries of government intervention.

We also tried a different approach to coding this concept by looking just at investments that have the word "concession" in the title as reported by ICSID. However, that approach was flawed because many investments of this type do not actually use the word "concession" and many are made with legal structures that are not strictly concessions. Thus we adopted, for our statistical tests, the industry-by-industry categorization.

Arbitration Flow Chart

Figure 1 expands on Figure 1 from the main paper.

Figure 1: Detailed Arbitration Flowchart

