

Reputational Impact of Investor-State Disputes

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Why ICSID Matters for FDI

- Disputes at ICSID signal to the investment community that this country is not serious about property rights protection
- central purpose of the ICSID is to facilitate international flows of private investment by removing non-commercial risks and providing investors with access to impartial and flexible dispute settlement procedures

ICSID is a special place

Compared to other venues, however, the ICSID is distinctive in four major respects.

- First, ICSID arbitration accounts for a higher percentage of treaty-based investment disputes than all of the other legal alternatives put together: a total of 57% as of the end of 2014 as compared to 27% for UNCITRAL.
- Second, the ICSID is distinctive in terms of its visibility as an institution formally affiliated with the World Bank with broad legal authority. Under the ICSID Convention, awards are binding on the parties to a dispute and enforceable as if they were final awards of national courts, with the ICSIDs narrowly delimited annulment rules establishing the only avenue of appeal. Awards can thus be enforced in any country that adheres to the ICSID Convention.
- Third, unlike other international arbitration bodies, the ICSID maintains a public record of arbitral claims, making information about allegations of investment treaty violations available to the international community.

Breaking Commitments

- Simmons: “The acceptance of treaty obligations raises expectations about behavior that, once made, are reputationally costly for governments to violate.”
- Buthe and Milner: “Violating an institutionalized commitment or not making amends to correct a violation that has occurred damages a country’s reputation for keeping commitments, making future cooperation on the same and other issues more difficult and maybe impossible to achieve.”
- Allee and Peinhardt: “The filing of a case before ICSID immediately brands the respondent country as an actor that is hostile to investors” and leads to “substantial losses in FDI.”

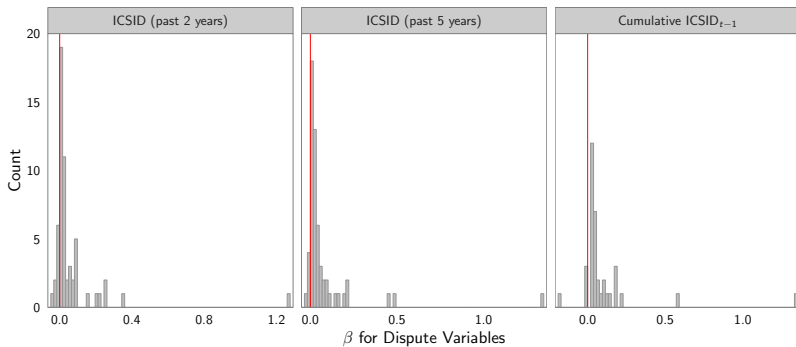
Role of Information Flows

- Investor-state dispute arbitration have not only produced inconsistent results, but even opposing ones in parallel cases involving identical sets of facts and parties but different treaties and arbitral tribunals.
- Compounding this limitation is a second characteristic of investment dispute settlement procedures: namely, information about an investment dispute may remain too limited to allow the investment community to gauge the extent to which treaty violations have occurred, especially for cases arbitrated confidentially.

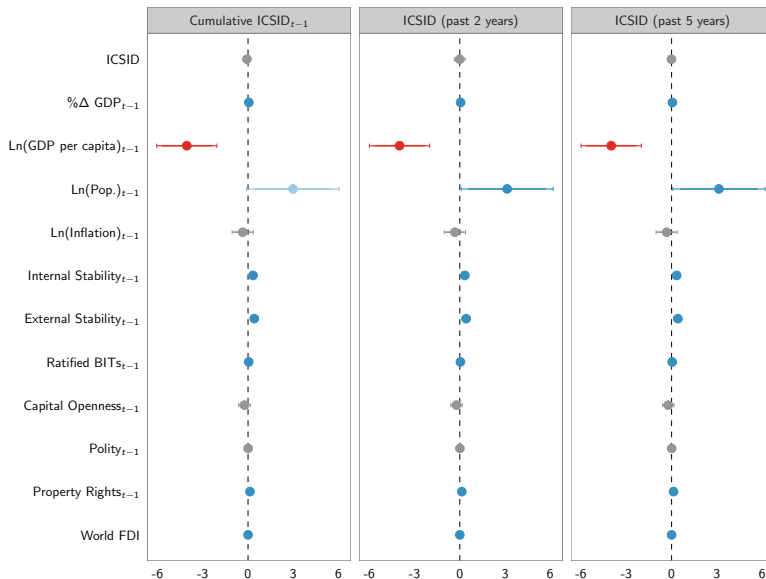
Sample for FDI Analysis

- 101 countries with 2,500 observations
 - Lower and middle-income nations
- 1987 – 2014

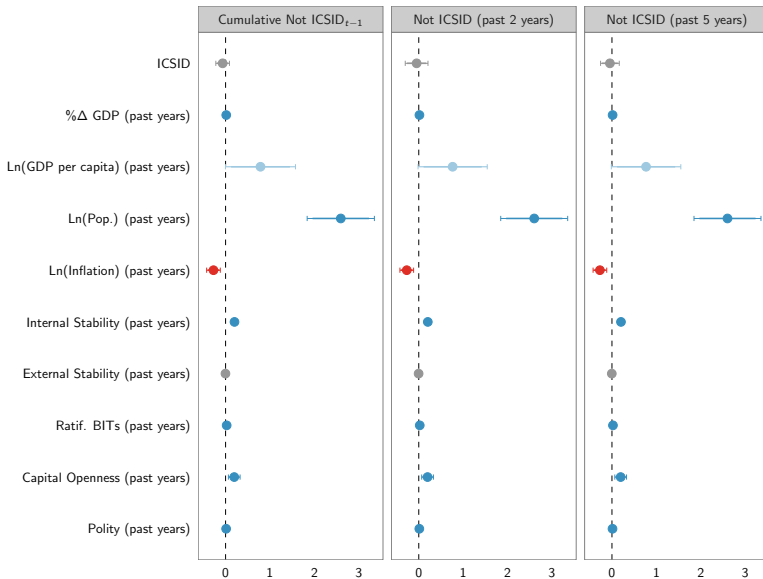
Bivariate Relationship



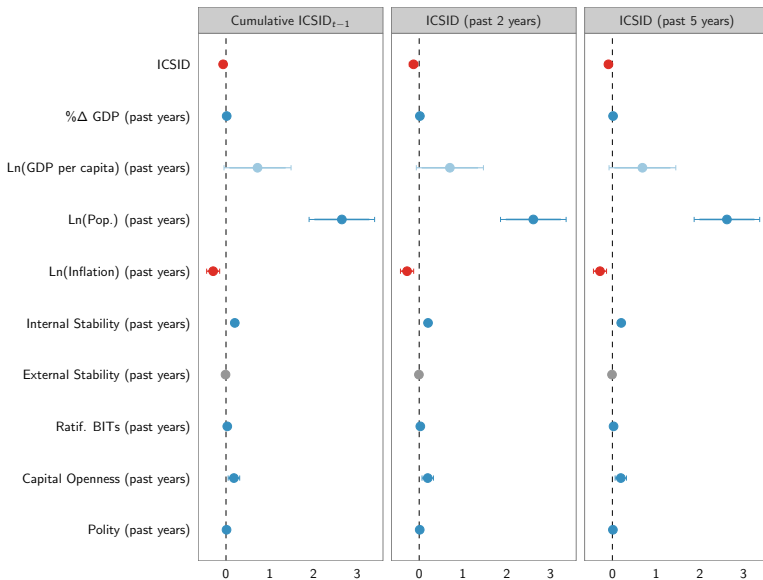
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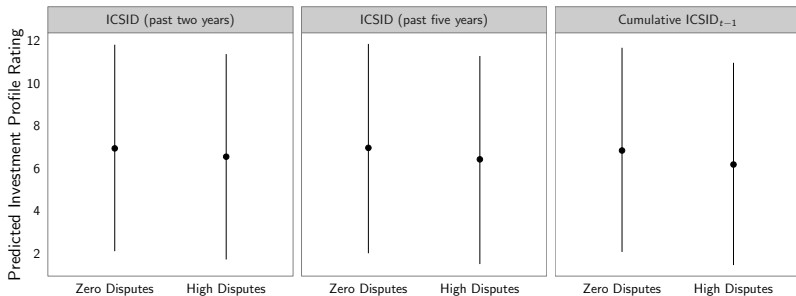
Effect of Non-ICSID Disputes on Investment Profile



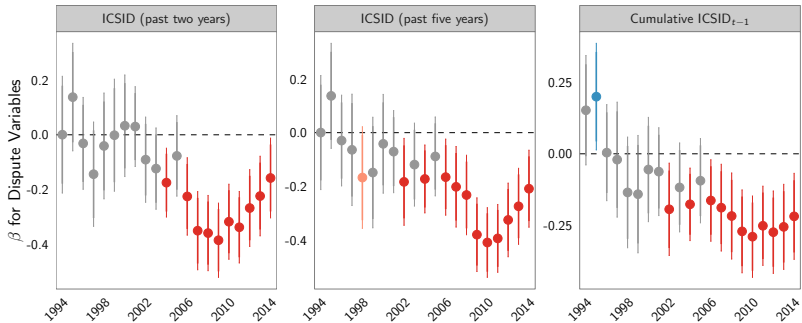
Effect of ICSID Disputes on Investment Profile



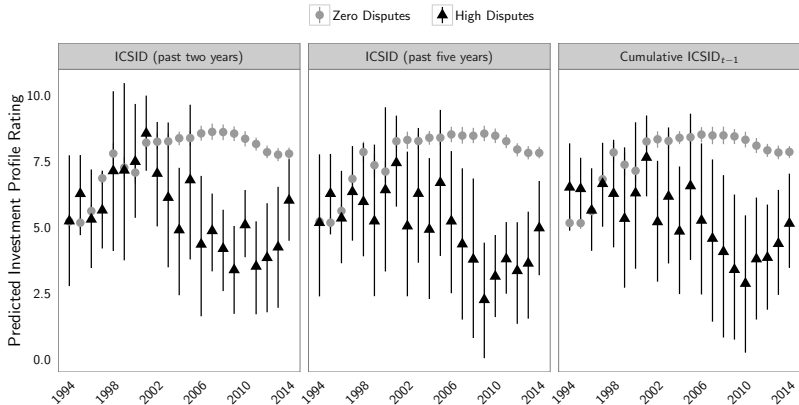
Substantive Effect of Disputes on Investment Profile



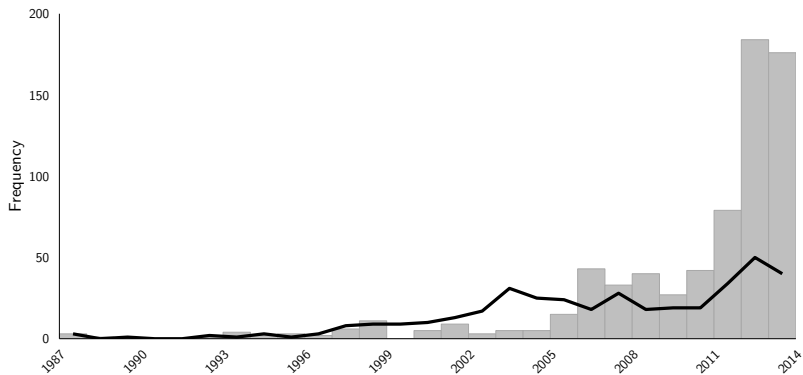
Change over Disputes Over Time



Substantive Effect of Changes in Disputes



Newspaper Mentions of ICSID



Thanks for your time!