

Reputational Impact of Investor-State Disputes

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March 19, 2016

Breaking Commitments

- Research on the compliance of states with international commitments emphasizes the deterrent effect of reputational damage
- The argument linking reputation to compliance with formal agreements remains largely unexamined

Existing Literature

- Simmons (2000): “The acceptance of treaty obligations raises expectations about behavior that, once made, are reputationally costly for governments to violate.”
- Buthe and Milner (2008): “Violating an institutionalized commitment . . . damages a country’s reputation for keeping commitments, making future cooperation . . . more difficult and maybe impossible to achieve.”
- Allee and Peinhardt (2011): “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.”

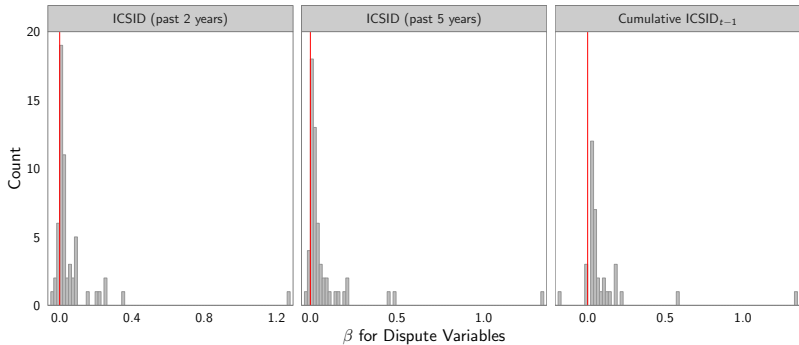
ICSID is a special place

- First, ICSID arbitration accounts for a majority of treaty-based investment disputes as of the end of 2014.
- Second, the ICSID is distinctive in terms of its visibility as an institution formally affiliated with the World Bank with broad legal authority.
- Third, unlike other international arbitration bodies, the ICSID maintains a public record of arbitral claims.

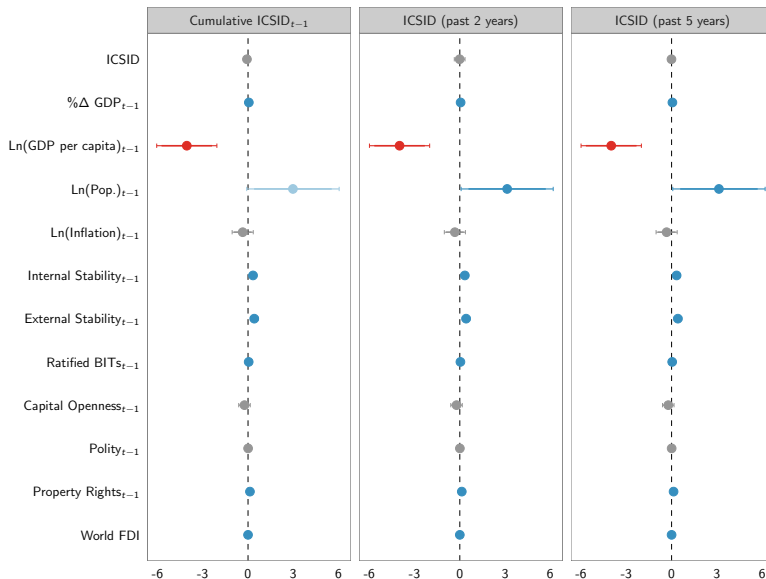
Role of Information Flows

- 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.
- 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.

Bivariate Relationship



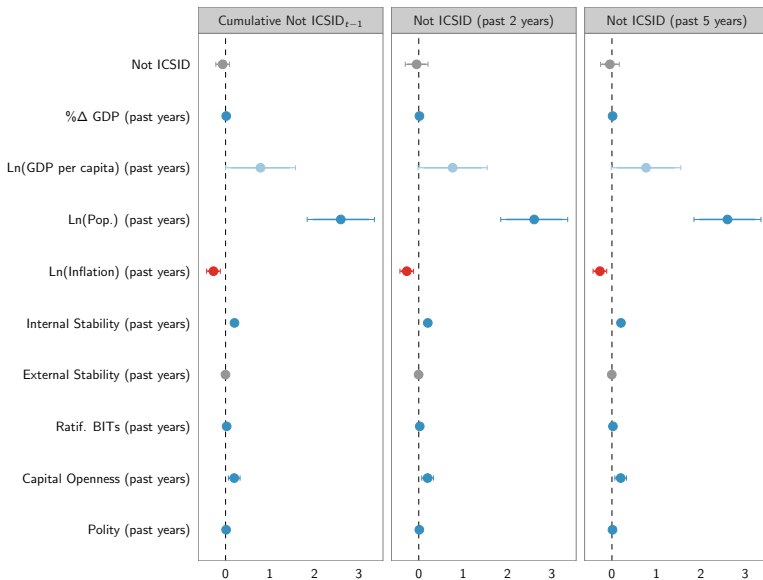
Adding in some controls...



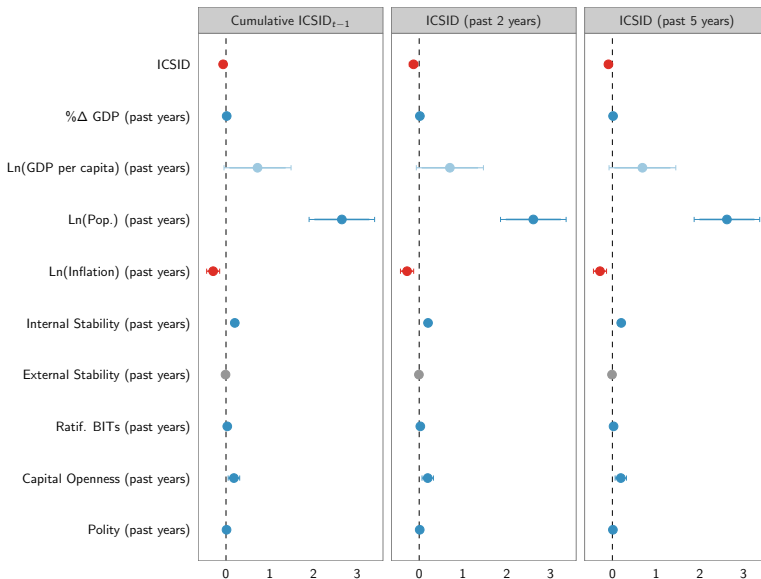
Design for Reputation Analysis

- Dependent variable: Investment Profile measure from ICRG
 - Ranges from 0 to 12
 - Focuses specifically on risk in the area of contract viability/expropriation, profit repatriation, and payment delays
- Key independent variables:
 - Disputes filed at ICSID (cumulative, two year, and five year counts)
 - Disputes filed in other fora (cumulative, two year, and five year counts)
- Controls:
 - Ratified BITs, GDP growth, Population, Inflation, Internal and External Stability, Financial Openness, and Polity
- Estimation Approach: Fixed effects with robust standard errors

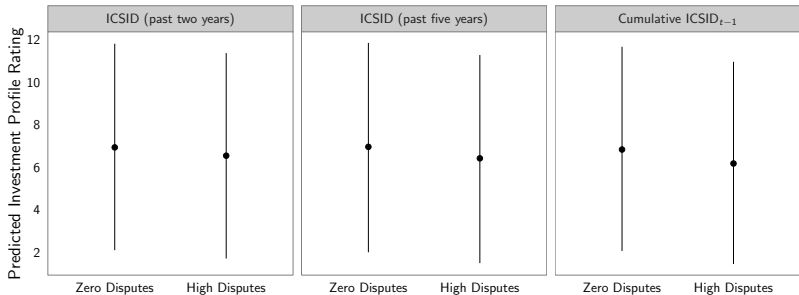
Effect of Non-ICSID Disputes on Investment Profile



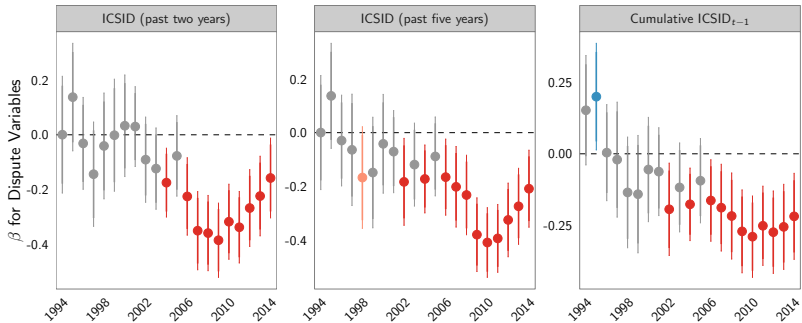
Effect of ICSID Disputes on Investment Profile



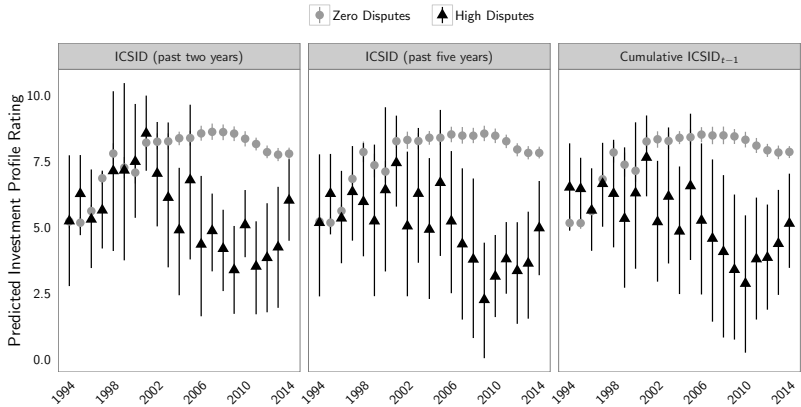
Substantive Effect of Disputes on Investment Profile



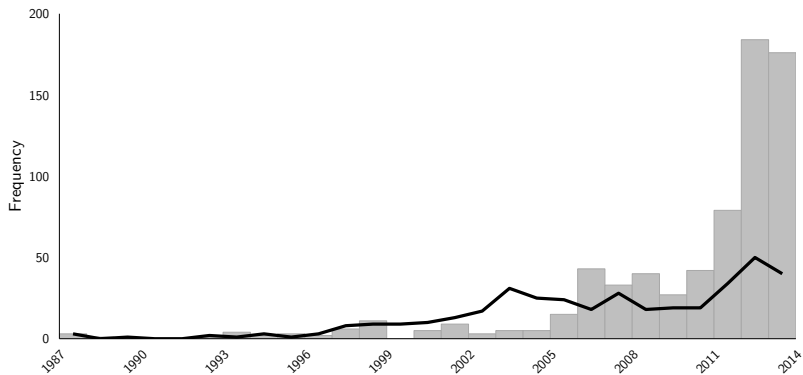
Change over Disputes Over Time



Substantive Effect of Changes in Disputes



Newspaper Mentions of ICSID



Listing of web-based services monitoring ICSID processes

Source	Year Established
Investment Treaty News	2002
Transnational Dispute Management	2003
Investment Treaty Arbitration	2004
Global Arbitration Review	2006
Investment Arbitration Reporter	2008
International Arbitration Database	2008
Kluwer Arbitration Blog	2009
Investor-State LawGuide	2011
International Investment Arbitration	2011

Thanks for your time!