Political risk and investment arbitration: an empirical study

Cédric Dupont, Thomas Schultz and Merih Angin

Graduate Institute of International and Development Studies, Geneva, Switzerland

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Abstract

Investment arbitrations should not happen too often, because they are costly processes for both parties. Yet they regularly happen. Why? We investigate the hypothesis that investment arbitrations are used as a means of last resort, after dissuasion has failed, and that dissuasion is most likely to fail in situations were significant political risk materializes. Investment arbitration should thus tend to target countries in which certain types of political risk has materialized. In order to test this hypothesis, we focus in this paper on two drivers of political risk: bad governance, and economic crises. We test various links between those two drivers of risk and arbitration claims. We use an original dataset that includes investment claims filed under the rules of all arbitration institutions as well as ad hoc arbitrations. We find that bad governance, understood as corruption and lack of rule of law (using the WGI Corruption and WGI Rule of Law indexes), has a statistically significant relation with investment arbitration claims, but economic crises do not.

Introduction

Since the mid-nineties, international investment arbitration has become a regular tool used by investors to settle disputes with host countries. Whereas its use remained almost absent from the radar from the first case in 1972 to 1995, it has since then quickly risen to an average of more 30 cases a year in the 2000s. It has even reached record numbers in 2012 and 2013 with respectively 60 and 69 new cases (UNCTAD 2012, 2013). According to our own account, we have now more than 775 cases of investment arbitration. Furthermore, the number of countries that have been targeted by arbitration is on the rise, both in the developing and developed worlds, to reach more than 100 countries.

Investment arbitration is heavy artillery. It has potentially very large financial implications for the host state of the investment: in three closely related awards, an investment arbitral tribunal recently ordered Russia to pay over US\$ 50 billion in compensation to the former shareholders of the Yukos Oil Company.[1] For investors too it is not an option resorted to lightly. For large cases, the costs of legal counsel can easily reach several million US\$. In the Yukos case just mentioned, the claimants indicated that their costs for legal representation exceeded US\$ 80 million, and the cost of the arbitration itself (arbitrator fees, fees of the institution and other attendant costs) amounted to nearly € 8.5 million. More importantly, filing an investment arbitration against a foreign government is often a cause of divorce, seeing the investor leaving the country. In that sense, investment arbitration could be considered as a means of last resort in the set of tools to remedy investment disputes, used when other means have either failed to prevent harmful state policies and decisions or to redress them. Given the costs mentioned above, it may look more like a means of destruction with potential large collateral damage.

This sorry state of affairs has stimulated a vivid debate in the policy community, where the anger of those preoccupied by the fate of developing nations is easily discernible.[2] The perception that investment arbitration is a powerful sword in the hands of the economic interests of the North, which use it to harm the weaker economies of the South, has led to a severe backlash against the current regime of investment arbitration.[3] Those leaning on the side of investors tend to respond that the rise of investment arbitration merely signals the maturing of an instrument that allows investors to force governments to abide by their obligations: investment arbitration would be nothing more than a shield against illegal state interference, and the protection offered by that shield is simply progressively improving.[4] Investment arbitration would, then, do nothing more than fulfill a legitimate societal function.

Against this background, we have investigated in earlier research to what extent investment arbitration fulfills three basic functions distilled from the literature in law: investment arbitration serves to champion and strengthen the interests of economic powers of the North to the detriment of political

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[1] Occidental Petroleum Corporation v The Republic of Ecuador, Award, ICSID Case No. ARB/06/11 (Oct. 5, 2012)

[2] Van Harten, *Investment Treaty Arbitration and Public Law*, OUP 2007, 17. David Schneiderman, *Constitutionalizing Economic Globalization*, CUP, 2008.

[3] See, e.g., Osgoode Public Statement on the International Investment Regime, 31 August 2010, Art. 14: states "should take steps to replace or curtail the use of investment treaty arbitration; and should strengthen their domestic justice system for the benefit of all citizens and communities, including investors." See also Michael Waibel, Asha Kaushal, Kyo-Hwa Liz Chung & Claire Balchin (eds.), *The Backlash Against Investment Arbitration*, Kluwer, 2010.

[4] Benedict Kingsbury and Stephan Schill, "Public Law Concepts to Balance Investors' Rights with State Regulatory Actions in the Public Interest - The Concept of Proportionality" in Stephan Schill (ed.), *International Investment Law and Comparative Public Law*, OUP, 2010.

powers of the South; investment arbitration serves to strengthen or impose the domestic rule of law in the host state of the investment; and investment arbitration serves to strengthen the international rule of law.[5] Our conclusion was that until the mid-to-late nineties, investment arbitration was used to a large extent both as a post-colonial instrument to strengthen the economic interests of the North and as a means to impose the rule of law in non-democratic states with a weak law and order tradition. Since the mid-to-late nineties, investment arbitration seems more oriented towards serving the function for which most international courts and tribunals are created that is, to strengthen the international rule of law. (How well it actually serves that function and whether the international rule of law is necessarily a good thing, regardless of its contents, are of course discrete questions.[6]) It is this line of thought on the functions of investment arbitration that we take further in the current study.

Our starting point is the following puzzle: investment arbitration processes are costly to almost all of those involved in them (except for the lawyers and the arbitrators, of course). Yet they do happen quite often indeed. Why? What causes investment arbitrations to happen?

Elkins, Guzman, and Simmons (2006) considered the question in a landmark study. They posited the following hypothetical: "Theoretically, we should expect ... arbitrations to be rare, because fully informed parties should be able to settle 'out of court' and avoid litigation costs."[7] In other words, fully informed parties would not let investment arbitration happen. And the fact that they do happen often, Elkins, Guzman, and Simmons argued, "indicates information asymmetries" rather than "the hopelessness of the case[s]". This may well have bee true in 2006, but then one would expect the number of cases to go down as investment arbitration becomes better known: information spreads and information asymmetries become less common. Yet we see precisely the opposite: the number of investment arbitration cases continues to rise.

We thus consider a different hypothesis: investment arbitrations are not mainly caused by information asymmetries, but by failed dissuasions. It is a means of last resort. Means of last resort are most likely to be used when the respondent government has little choice or room for maneuver: in situations where certain types of political risk materializes. This hypothesis corresponds to one of the main reasons why investment arbitration was initially created: to protect investors against political risks. [8]

The more specific question we ask, then, is whether investment arbitration is more likely to happen against countries with certain types of political risk. Taking further previous research focus on the oil & sector, we seek to identify broad contextual conditions, constituting sources of political risk for investment in countries hosting foreign investment, that make the subsequent use of arbitration more

frequent.[9]

A parallel can be made with the trade literature. There has indeed been significant discussion in the IPE literature on trade protectionism regarding the behavior of governments in the current world economic situation and the legality of domestic economic choices in an era of deep interdependence: a relevant aspect, for our paper, of that discussion is the debate on whether the "protectionist dog" (Wolfe 2012) has barked or not. Given the absence of a clear definition of what such a protectionist dog exactly is and the fact that the barking may take place in a very noisy environment, that debate is still open. In the field of international investment, our overall understanding of the behavior of states faces similar obstacles: the barking is in most cases very difficult to hear given its very focused spectrum. Harmful state actions may only affect one investor, something unlikely to happen in trade. Unlike Elkins, Guzman, and Simmons, we consider that the occurrence of investment arbitration may indicate that there was some serious barking in the recent past that could not be stopped in a less intrusive way (without shooting at the dog as it were). This would suggest some similarity to states resorting to the WTO DSM to address loud and long barking by the protectionist dog.

The paper is structured as follows: we begin with a brief discussion of two cases of investment arbitration that we consider to be responses to the realization of different typical situations of political risk. Drawing from these cases and the literature, we then turn to a conceptualization of political risk and develop theoretical propositions linking two particular situations of risk and the use of investment arbitration. We then discuss our research design, present the empirical results and conclude.

Arbitration and political risk: two short stories

In the 1990s, a Canadian company called Banro was mining for gold and tin in the Democratic Republic of Congo. Towards the end of that decade, the Congolese government decided to increase its share of revenues from these raw materials. It implemented that decision by taking a number of measures that significantly decreased the value of Banros interests in the country. Banro tried to fight the government through international legal channels. One of its important advisors in this regard was a lawyer named Patrick Mitchell. Albeit a US national, he was operating a small legal advisory firm based in Congo, called Mitchell & Associates.

The firm was successful in advising Banro, and thus in attracting the ire of the Congolese government. Among other things, Mitchell & Associates obtained a court order in South Africa that confirmed Banro's ownership of a significant shipment of tin en route from Cape Town to a processing facility in Malaysia. Infuriated by the presence of such competent lawyers within its territory who defend foreign interests, the Congolese government arrested two employees of Mitchell & Associates and placed them on trial for high treason, alleging a threat to state security. The offices of Mr Mitchell were ransacked and sealed by the Congolese authorities. His business was destroyed.

In response, M. Mitchell took legal action against the government: he filed, in 1999, an investment arbitration under the aegis of the World Banks International Center for Settlement of Investment Disputes against the DRC. He alleged that he had been expropriated of his investment in the law

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[9]Cédric Dupont, Thomas Schultz, Melanie R. Wahl and Merih Angin, (2015). "Types of Political Risk Leading to Investment Arbitrations in the Oil and Gas Sector," *Journal of World Energy Law & Business*, 8(4): 337-361.

firm. After 8 months of imprisonment, his employees were released.

Arguably, M. Mitchell had experienced the materialization of a certain type of political risk: a blunt disregard of the rule of law. Investment arbitration was the tool he used to respond to it (unsuccessfully, in the end, but for idiosyncratic legal reasons).[10]

Between the early 1970s and 1991, Argentina suffered eight major currency crises. But in 1991, a radically new economic plan was introduced, which would reduce trade barriers, deregulate industries, privatize government-owned entities including in certain public utility sectors, and peg the Argentine peso to the US dollar.

As part of these efforts, the government passed the 1992 Gas Law, which allowed the privatization of Gas del Estado S.E., with its two transportation and eight distribution companies. CMS Gas Transmission Company, incorporated in the USA, acquired part of the shareholdings.[11] For many years, its collaboration with the Argentine government went well.

But in January 2002, an economic crisis brought Argentina to its knees: the government defaulted on its US\$ 80 billion foreign debt. One of the measures Argentina took to alleviate the worst of the crisis was to unpeg the peso from the US dollar: in a matter of five months, the value of the Argentine peso dropped by nearly 70 per cent compared to the US dollar. The Argentine government froze all utility rates by enacting an 'economic emergency law', which also terminated the right of privatized gas transportation and distribution companies to charge tariffs calculated in US dollars, requiring them to renegotiate the agreements according to the new exchange rate regime.[12] CMS unsheathed the international sword: it filed an investment arbitration against Argentina, as did dozens of other foreign investors, invoking the provisions of the USArgentina Bilateral Investment Treaty (BIT).

Arguably, CMS had experienced the materialization of a second type of political risk: a disregard of the rule of law driven by financial crises, or more generally by economic slowdowns pushing governments to take measures that harm foreign investors. Once again, investment arbitration was the tool the company used to respond to the materialization of this political risk.

While there are clear cases in which investment arbitration was used to respond to the materialization of certain political risks, is this really a typical use of investment arbitration? Are there correlation between political risks and the use of investment arbitration? Are certain dimensions of political risks, such as the two identified above, related to and revealed by the use of investment arbitration? Is the role of investment arbitration to react to or to prevent the realization of such political risks? What do we learn about political risks by studying the history of investment arbitration, from 1972-2014? These are the questions that underlie this paper.

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[10] Investment Treaty News (ITN), November 24, 2006.

[11] José E Alvarez and Kathryn Khamsi, 'The Argentine Crisis and Foreign Investors: A Glimpse into the Heart of the Investment Regime' in Karl P Sauvant (ed), The Yearbook on International Investment Law and Policy 2008/2009 (OUP 2009) 388.

[12] ibid 389-90.

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Political risk and investment arbitration: theoretical propositions

The two brief stories on arbitration cases targeting the DRC and Argentina suggest a typology of political risk with three facets. This section conceptualizes this typology and then proposes hypothetic links with the use of investment arbitration.

A parsimonious view on political risk

The notion of political risk is central to the legal, political and economic literature on international investments. Yet its precise contours remain unclear and no consensus has been reached on its definition. This allows us to elaborate our own conceptualization of political risk. It builds upon two strands of literature.

The first strand is the practitioner-oriented literature on investment law. Political risk, in this strand, encompasses a relatively loose array of both specific government measures harming an investors rights and various other types of hazards that have a political component. Rubins and Kinsella (2005), for instance, offer the following list: a) expropriation, nationalization and confiscation; b) regulatory interference; c) currency risk; d) civil disturbance; e) breach of state contracts; f) corruption; g) trade restrictions.[13]

Second, we draw upon the literature on states' reactions to situation of economic difficulties, famously captured by the notion of "politics in hard times."[14] Gourevitch (1986), for instance, identifies a range of broad policy options available to governments to respond to severe crises, including nationalization and protectionism.[15] Both options are likely to have an impact on foreign investors. This literature includes a review of a range of domestic and international factors explaining the choice among the various policy options.

Our conceptualization of political risk focuses on broad conditions that lead to the materialization of political risk as distilled from the literature mentioned above. We identify the two following conditions: a) severe economic conditions; b) poor governance, such as public corruption, lack of respect of rule of law, lack of transparency and no respect for individual rights. Those two sets of conditions rarely, if ever, exist in pure, isolated form, but occur in combinations of varying degrees of intensity.

Linking political risk and arbitration

Governance and arbitration

Investment arbitration may be used to respond to a first type of political risk: governance issues. By governance issues, we mean situations in which governments simply run roughshod over treaty or contract obligations, over international law or their own domestic law. Put differently, these are circumstances in which public powers are exercised by states in a way that unduly interferes with a

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[13]Noah Rubins and N. Stephan Kinsella. *International Investment, Political Risk and Dispute Resolution. A Practitioner's Guide.* Oxford University Press (2005). pp 5-25.

[14]Peter Gourevitch, *Politics in Hard Times, Comparative Responses to International Economic Crises.* Ithaca, Cornell University Press (1986).

[15]Ibid.

foreign investment in plain, blunt disregard of legal obligations. Such situations correspond to a weak rule of law, in the sense that "the rule of law is distinguished from regimes of administrative command and control, where 'arbitrary' state action prevails. Law is the instrument that gives the individual power to resist the state."[16]

We envisage two main types of such blunt disregard of legal obligations: first, carelessness strictly speaking, where the authority of law is simply ignored; second, simple administrative or governmental disarray, where a government is unable to have the rule of law respected in its country. In the first type, disregard is by design. In the second type, disregard is merely by effect.

Investment arbitration would, then, be used to stimulate or react to the absence of "good and orderly state administration and the protection of rights and other deserving interests", as is often claimed in the law literature.[17] We consider that such situations would typically translate as poor institutional conditions.

This leads us to our first hypothesis: arbitration claims are more likely to target states with poor institutional conditions than those with good institutional conditions.

In previous work making descriptive use of our dataset, we provided mixed empirical evidence for this theoretical proposition.[18] For the period up to the mid-nineties, the data the idea reasonably plausible that investment arbitration was indeed used mainly to respond to situations of poor governance, where governments simply bluntly disregard their legal commitments, by design or effect. However, in the mid-to-late nineties when investment arbitration claims became more frequent, the situation somewhat shifted. Since then, investment arbitrations have been filed against governments exhibiting, on average, a relatively high level of democratic development and rule of law.[19] Given that the use of investment arbitration has really taken off in the mid-to-late nineties, with the vast majority of cases having been filed between the mid-to-late nineties and today, the overall plausibility of that hypothesis is low inasmuch as we consider investment arbitration globally, as a whole.

Nevertheless, through time there has been an increasing tendency toward a skewed distribution of cases with some clustering at the bottom and upper echelons of the level of democratic government and rule of law. It thus remains plausible that compensating for poor institutional conditions in countries that have a weak rule of law tradition remains a function of certain arbitrations, as an important part of investment arbitration still target such countries, while another important part of investment arbitration are aimed at countries with a high level of respect for the rule of law. In other words, for the post-late-nineties period our data may suggest a dualization of the function of investment arbitration. But, clearly, one needs to go beyond descriptive statistics, a task that we turn to in this

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[16]Kerry Rittich, *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform*, Kluwer, 2002, 67.

[17]Benedict Kingsbury & Stephan Schill, "Investor-State Arbitration as Governance: Fair and Equitable Treatment, Proportionality, and the Emerging Global Administrative Law", Institute for International Law and Justice, NYU Law School, Working Paper 2009/6 (Global Administrative Law Series), p. 8, http://www.iilj.org/publications/documents/2009-6.KingsburySchill.pdf.

[18]For more details see Schultz and Dupont (2014).

[19]A parallel may be drawn with Beth Simmons, "The International Investment Regime since the 1980s: A Transnational "Hands-Tying" Regime for International Investment", conference paper, 2011 Annual Meeting of the American Political Science Association, September 1-4, 2011, who found that the average polity score of states seeking annulment of an ICSID award, up to 2008, was 2 on a scale of 10 (scale and source of information undisclosed in the conference paper), and it shot up to 6 on the same scale after 2008. The parallel has its limits though, since the reasons for a state to file annulment proceedings (Simmonss study) are starkly different from the reasons for an investor to file a claim (our study).

paper.

Economic crisis and arbitration

Investment arbitration may also be used to respond to the third type of political risk identified above: severe economic conditions. How states react to severe economic conditions is documented in a rich literature. In hard economic times, governments face strong political pressures from citizens, political parties and pressure groups. Political, economic and social domestic actors use all available institutionalized channels, and oftentimes manifest themselves in the protest arena, in order to push for the adoption of immediate, and sometimes radical, policy responses to the crisis.

Governments have of course reacted differently to such pressures, depending on a host of economic, social and political factors. But one type of reaction traverses most fault lines: market intervention.[20] Such market intervention primarily aims at helping domestic interest often with negative effects (direct or indirect) on foreign investors.

Another significant feature of acute economic crises is the difficulty governments face in adopting policy responses that appropriately address core concerns of domestic actors. Failures in such attempts have led to episodes of government change,[21] or even to political regime change.[22] Such changes plainly put foreign investors at risk in the short run, although they may lead to better conditions over the medium or long run.

In seems reasonable to infer two simple points from these debates. First, in times of economic crises, governments often have to adopt quick measures that are very likely to hurt, inadvertently or intentionally, the rights and interest of foreign investors.[23] Second, given the political dynamics that follows severe economic crises, governments have a hard time quickly reverting to "normal" behavior, thus making it unlikely that foreign investors can find acceptable arrangements to redress harm caused by policy change.

This leads us to our second hypothesis: severe economic crises are prone to lead to the filing of arbitration claims by foreign investors. Put differently, arbitration claims are more likely to target states that recently suffered a severe economic slowdown than those with stable economic conditions.

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[20]See Gourevitch (1986) and more recently Nancy Bermeo and Jonas Pontusson, eds. *Coping with Crisis: Government Reactions to the Great Recession.* New York: Russel Sage Foundation (2012).

[21]Recent work on the great economic recession shows that electoral processes in 30 European countries since 2008 strongly confirm the major finding of the literature on economic voting that incumbents are voted out in elections in times of economic recessions. Given that the recession is particularly severe, and in most countries clearly attributed to governments, the effect on incumbents has been particularly strong and fast. In countries with more than one electoral process since 2008 and ongoing acute economic slump, the interesting result is the tendency to choose outside of main parties, including radical, "anti-parties" or to abstain (Kriesi, Hanspeter. The Political Consequences of the Financial and Economic Crisis in Europe: Electoral Punishment and Popular Protest *Swiss Political Science Review*, 18(4) 2012).

[22]Gasiorowski, Mark J. Economic Crisis and Political Regime Change: An Event History Analysis. *American Political Science Review*, 89 (4): 882-897 (1995); MacIntyre, Andrew. "The Politics of the Economic Crisis in Southeast Asia." *International Organization* 55(1): 81-122 (2001); Pepinsky, Thomas B. "The Global Economic Crisis and the Politics of Non-Transitions," *Government and Opposition* 47(2): 135-161 (2012); Remmmer, Karen L. "Democracy and Economic Crisis: the Latin American Experience." *World Politics* 42(3): 315-335 (1990).

[23]The recent financial crisis in Cyprus is a case in point: the government bail-in measures explicitly targeted foreign, in that case Russian, bank depositors.

Research design

Dataset and variables

We first run an ordinal logistic regression in order to investigate the propositions discussed in the previous section. The models analyze the likelihood of a variation in the frequency of the number of arbitration claims per country per year. We then employ a negative binomial regression to test the same hypotheses with a count model.

The current study draws on a dataset of 775 investment arbitration claims, filed between 1972 (year the first investment claim was filed with ICSID[24]) and 2014.[25] The unit of analysis used here is claims — not awards since certain claims end in a negotiated agreement or are withdrawn, and not cases since the definitional ambiguity of that concept is greater than that of claims.[26]

Our study relates to investment arbitration in general, also called investor-state arbitration. We thus go beyond investment *treaty* arbitration, which encompasses only investment arbitration based on an international treaty (typically a bilateral investment treaty (BIT)). Our dataset thus includes arbitration claims based on a treaty (bilateral or multilateral), or a contract between the host state and the investor, or the domestic investment law of the host state of the investment.

The study is further concerned with all types of investment arbitration in the sense that the dataset covers claims filed under the rules of all relevant arbitration institutions (mainly the World Bank's International Center for Settlement of Investment Disputes (ICSID), the Permanent Court of Arbitration (PCA), the International Chamber of Commerce (ICC), the Stockholm Chamber of Commerce (SCC)) as well as ad hoc arbitrations (primarily conducted under the rules of the United Nations Commission for International Trade Law (UNCITRAL).

Based on the experience of the second author and on informal consultations with other researchers and practitioners, this universe of claims appears to be close to a complete picture of all investment arbitrations filed during that period. It seems reasonable to estimate that no more than 10% of the existing investment claims are missing in our dataset, given that few arbitration cases remain entirely secret and no information about them ever leaks somehow to the public.

These 775 claims were encoded in the dataset according to the year in which they were filed (see Annex 1 for a short description of dimensions that are encoded per claim).[27] Figure 1 shows the evolution of claims filed between 1972 and 2014 It is noteworthy that the number of claims filed annually significantly increased starting in the mid-to-late nineties — a period during which the investment arbitration system "shifted gears", which is correlated, as we will see, to a number of significant systemic changes in investment arbitration.

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[24]*Holiday Inns S.A. and others v. Morocco* (ICSID Case No. ARB/72/1).

[25]The dataset was initially compiled by a postdoctoral researcher at the University of Geneva, Dr Leonila Guglya, It has since then been revised (and expanded) by the authors and further updates will extend the coverage to claims filed in 2015.

[26]A "claim" is a request for arbitration filed by a claimant with an arbitration institution (such as ICSID), or a notification of the initiation of an arbitration sent to the respondent if no arbitration institution is involved (in ad hoc arbitrations). A "case" is a loose term, typically designating two specific parties and a broad set of facts. A "case" may include more than one "claim", possibly filed with different arbitration institutions. A "claim" may include several consolidated "cases".

[27]Encoding of 775 claims does not mean, however, that we have been able to code fully all dimensions of those claims. For instance, we have not been able to reliably identify either claimants or respondents for 30 claims.
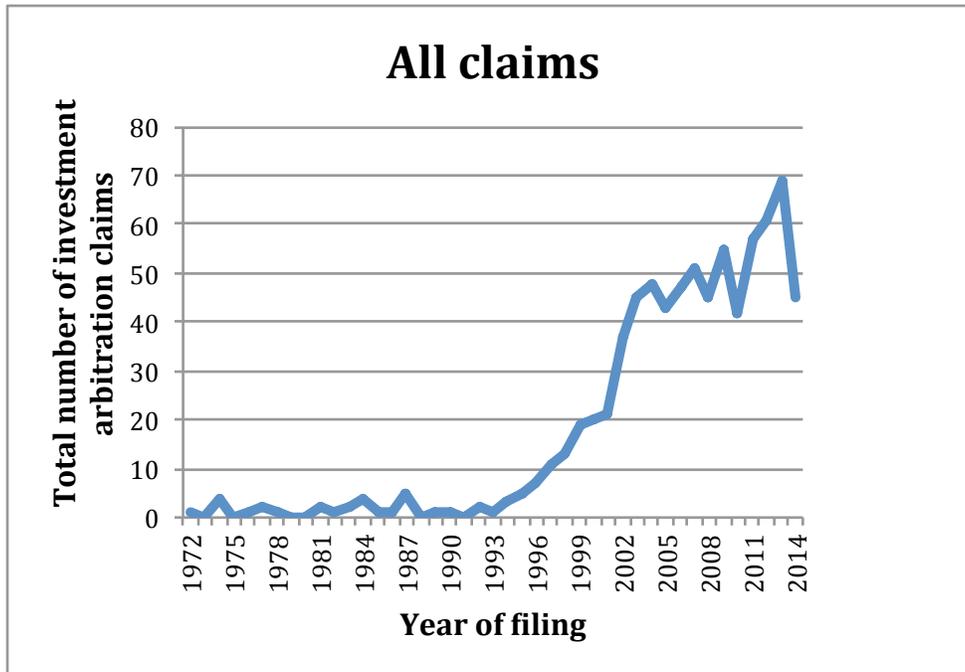
All claims

Figure 1: Number of investment arbitrations claims filed per year

The sources of the data collected were as broad as possible. The dataset includes all cases about which information was found either directly in an award, or indirectly in other datasets and reports of law firms and of specialized journalists.[28] We thus decided to focus on scope and statistical relevance, accepting a small loss in reliability and accuracy due to the use of secondary sources.

Our dependent variable is the number of arbitration claims per country per year. It is derived directly from our dataset. To make it more operational, for the logistic regression, we transform it into a categorical variable that scores 0 if either (a) there is no claim in a given year or if (b) there is only one isolated claim. An isolated claim is defined as single country/year claim without any claim in the preceding and following four years. The variable scores 1 for country/year observations with either one non-isolated claim or two claims. It scores 2 for country/year observations with 3 or more claims, meaning that 3 or more claims were filed that year against a given country.

This choice of a categorical variable both captures some variation in the magnitude of the number of claims while controlling for the long tail in the distribution of the number of claims per country/year.[29]

Another specificity of the data, clearly visible in Figure 1, is the high concentration of claims in the period 1995-2014. Given that the preceding period includes only 34 claims over 23 years and is generally considered to be the dormant period of investment arbitration, we restrict our empirical analysis to the period 1995-2012 (the analysis does not include 2013 and 2014, as we have data for ICRG scores until 2012, thus for consistency purposes the regressions are run for the other independent

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[28]For more details on the specific sources, see Annex 1 and Schultz and Dupont (2014).

[29]The number of claims per country/year observation is mostly one (260) with a quick decrease for two claims a year (66), three claims a year (19), four claims (15) to then drop to one or two cases of 5, 6, 7, 8, 9 and 10 claims a year. Up to 2012, there was only one observation with more claims, that is, Argentina with the record 22 claims in 2003.

variables with the same time frame). The total number of observations is 2034 with a distribution of 1720/270/44 in the zero, one and two category respectively. We also use a further restricted dataset that gets rid of countries targeted only once during the whole period. In such cases, the informational asymmetry (see Elkins, Guzman, and Simmons (2006), discussed above) may indeed be valid, as well as many other idiosyncratic factors. In other words, for a state to become a respondent in an arbitration once in eighteen years is something that may well just happen, just as an average driver occasionally gets a ticket, without the event telling us anything about the behavior of the state, or the driver. This reduced dataset includes 1368 observations with a distribution of 1067/214/87. The number of countries included in the base dataset is 113 and drops to 76 in the reduced dataset. This already tends to suggest that there are only 76 countries in which something out of the plainly ordinary happened in the 1995-2012 period that triggered a reaction by investors.

Independent variables

Independent variables for governance

Our first hypothesis, as we said, suggests that investment arbitration is more likely to target countries with poor institutional conditions. We conceptualize this variable by relying on three composite indices of the Worldwide Governance Indicators (WGI).

We first assess the quality of domestic legal and judicial institutions through the WGI Rule of Law index, which 'captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts.'[30] In other words, we take it to measure to what extent domestic legal institutions are able or willing to provide an independent and fair assessment, and potentially a remedy, for an interference with an investment. The index measures the perception of the quality of domestic legal institutions, rather than their objective quality. Yet, an investor that merely perceives these institutions to be deficient may also be more likely to seek remedy for any interference with his investment by presenting a claim to an international investment tribunal.

Secondly, we consider whether domestic institutions may interfere with an investment by design. We assess this scenario by looking at the WGI Regulatory Quality index, a business-friendliness measure that captures 'the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.'[31] Rather than measuring the capacity of domestic institutions to adequately respond to an investment interference, this index would point out the likelihood of the interference itself.

Thirdly, we look at the WGI Corruption index, which 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."[32] We use all indicators without lagging their effects. We decided not to lag their effects, despite our argument that investment arbitration is the result of serious governmental misconduct in preceding years, for two reasons. First, the indicators are relatively stable. Lagging their effect is unlikely to produce any significant difference for the

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[30]WGI Methodology, <http://info.worldbank.org/governance/wgi/rl.pdf> (last accessed on 10 March 2015).
[31]Ibid.
[32]Ibid.

descriptive type of analysis performed here. Second, it is unclear to which extent past and current domestic institutional conditions respectively affect the decisions of investors to give up alternative ways to settle a dispute and use arbitration. True, poor institutional conditions in the past are likely to have led to the dispute. However, ongoing poor institutional conditions are likely to continue to indicate that any deal with the government is risky.

Apart from the abovementioned indices, we also consider some other prominent indicators to compare our results. The ICRG Law and Order score is a widely recognized proxy for the strength of the rule of law. It is a combination of two factors – namely, "Law", which is an "assessment of the strength and impartiality of the legal system", and "Order", which is an "assessment of popular observance of the law."[33] The Law and Order variable ranges from 0 to 6 with lower scores indicating a less established legal system. The use of the Polity IV score (scale -10 to 10) brings a different perspective on the institutional situation in host countries. In a more authoritarian country, policy and legal changes can clearly be more sudden and swifter. This translates into potential political risk.[34]

Independent variables for economic crises

Our other hypothesis posits that investment arbitration is more likely to target countries that have gone through severe economic situations. We conceptualize this variable with GDP growth rates using the National Accounts Main Aggregates Database from the UN Statistics Division, as this database has only few missing values for the countries and time period covered by our dataset, unlike the World Bank database for instance, where we would get missing data for Argentina, which is one of the key cases in this research. We consider that growth rates best capture the idea of overall general economic difficulty that may result from a host of different economic factors. As such, for our purposes, growth rates appear to be a more appropriate indicator than more specific variables, such as the average price of main export commodities, data on public finance or unemployment.[35] Following Simmons' 2014 study that found a positive correlation between inflation and litigation, we also consider inflation rate as a measure of economic hardship. According to the results of a random-effects generalized least squares regression employed, she concludes that "the higher the (log of) inflation, the greater the probability of arbitration in two years later."[36] In this context, we look at percentage change in consumer price index (International Financial Statistics data) between 1995-2012.

In contrast to our strategy for the independent variables on institutional conditions, we lag the effect of growth rates on our categorical dependent variable, using alternatively a 3 and 4 years lag. Such a lag is necessary because investment arbitrations are typically not filed immediately after the litigious event occur, and much less immediately after the financial difficulty hits. It is much more typical that a financial difficulty hits a country, sometime later the government takes measures that

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[33]International Country Risk Guide, Researcher Dataset (ICRG T3B - Political Risk, ICRG Methodology, http://www.prsgroup.com/ICRG_Methodology.aspx.).

[34]Monty G. Marshall, Polity IV Project: Political Regime Characteristics and Transitions, 1800-2012, http://www.systemicpeace.org/polity/polity4.htm.

[35]The use of unemployment figures would require to carefully consider the social automatic stabilizers. Data on public finance and inflation would require a clearly longer view on economic performance.

[36]Beth A. Simmons, (2014). "Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment," *World Politics*, 66(1): 30.

harm investors, and again some time later, when dissuasion and amicable dispute settlement have proven unsuccessful, the investor files the arbitration claim. In addition, many investment agreements provide for a so-called freezing or cool-off period. This forces the claimant to wait (or negotiate) for 6 to 12 months, starting from the moment the government is notified of the investors intent to resort to formal dispute settlement mechanisms, before the arbitration claim can legally be filed. We estimate this period, between the occurrence of an economic slowdown and the filing of an arbitration that would ensue, to amount to 3 to 4 years.

Admittedly, one could make the argument that growth rates at the time of the filing of a claim may also have some influence. No lag should therefore be used. One could indeed consider that countries that had bad conditions both in the past (leading to the litigious policy decisions) and in the present are the least likely to sincerely negotiate with investors. The latter may, then, have no other option to quit or litigate. Countries with bad economic conditions "only" in the past, conversely, may be more willing to engage in such sincere negotiations. This is, however, a very speculative argument that we choose to preliminary investigate empirically in this paper.

Control strategy

We control for some conditions or factors that may affect the relationship between our dependent and independent variables. First, we use a dummy variable to control for the existence of ongoing IMF programs in the investment host countries. Such programs come with conditions that tend to severely limit the discretion of governments and tend to act as seals of guarantee of sound, market friendly behavior. From this perspective, one could expect that international investors may be less tempted to resort to international arbitration against countries that have ongoing IMF programs. It seems reasonably plausible that countries suffering from an economic slowdown are on average softer on foreign investors if they are in an IMF program than if they are not, because of constraints imposed by the IMF. Besides, as Broz points out "[e]xternal monitoring by the IMF might create the transparency necessary to make a monetary commitment credible,"[37] As a matter of fact, the IMF monitoring has significant impacts regarding credible commitments. Even if a country has severe domestic economic problems, the implementation of a stability program led and engineered by the IMF may render the country credible, as it is usually perceived as a sign that the country is on the right track, which usually avoids speculative attacks on its currency as well. The dummy variable takes the value of one if the country is borrowing from the Fund.[38]

Second, we address the issue of the alleged tendency in arbitration to target poorer countries by controlling for the level of economic development.[39] As highlighted in previous work using only descriptive statistics (Schultz and Dupont 2014), there is no evidence that states with low levels of economic development have been more frequently targeted than states with higher levels of economic development. In absolute numbers, states on the higher end of economic development have been

[37]Lawrence Broz, "Political System Transparency and Monetary Commitment Regimes," *International Organization* 56, no. 4 (2002): 884.

[38]Information, accessible on the website http://www.imf.org/external/country/index.htm, together with the Fund's MONA (Monitoring of Fund Arrangements) database.

[39]Muthucumaraswamy Sornarajah, "Toward Normlessness: The Ravage and Retreat of Neo-Liberalism in International Investment Law" 2 *Yearbook of International Investment Law & Policy* 595 (2010), 618ff.

respondents in more arbitrations than states on the lower end of economic development. Nevertheless, we remain to investigate whether there is some evidence of the curvilinear relationship between expropriation and the level of development, as would be suggested by earlier work on foreign direct investment. Indeed, a study examining expropriations in the 1970s found that the highest number of expropriations took place in countries with medium scores of economic development. Hence, we may expect the greatest number of arbitrations to take place against states in this range of economic development.[40] We use the World Bank income level four-fold classification: low income, lower-middle income, upper-middle income and high-income countries.[41] It is based mainly on gross national income (earlier gross national product) per capita. For the time span of our study, income levels of countries included in our analysis remain unchanged.

Third, given the large number of claims targeting Latin American and Caribbean countries, we control for a possible regional effect specific to that part of the world. We use a binary dummy variable scoring one for Latin American and Caribbean host countries and zero for countries from the rest of world. One possible interpretation for a regional specific pattern would be a stronger influence of economic ideology on governments' reactions to economic difficulties, leading to severe strains with foreign investors. Given the high number of claims against the Bolivarian Republic of Venezuela, but also against Ecuador, Bolivia and Argentina, the economic ideology factor should be investigated and controlled for (there are 15 Latin American or Caribbean countries in our data). But this would properly require a fuller investigation, which is beyond the scope of this paper.

Fourth, we control for a possible effect of the sector of activity of the investment to which the arbitration relates. Given recent evidence that foreign firms seem to be more vulnerable to expropriation in resource-based sectors,[42] we use a binary dummy variable that scores one for investment in the primary sector (agriculture, mining, oil, gas and petroleum).

Fifth, and last, given the high number of claims filed by investors with US nationality, we control for a possible effect of US nationality. The theoretical proposition could be that investors with US nationality may have a particularly broad set of options available to address a concern with foreign governments, given the economic power supremacy of the US. It would then seem to follow that one could expect arbitration to be less likely to be used by investors with US nationality. This may particularly be true for host countries that do not belong to the high-income category, because they are comparatively weaker against the US economic power.

Results

In this section of the paper, we summarize the statistical findings derived by testing our two hypotheses. As mentioned earlier in the paper, first an ordinal logistic regression with a categorical dependent

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[40]See Jodice (1980). The level of economic development no longer features prominently in recent work on expropriation. For instance, Hajzler (2012) focuses on output price levels and Wellhausen (2013) on FDI national diversity (Christopher Hajzler, "Expropriation of foreign direct investments: sectoral patterns from 1993 to 2006," Review of World Economy, 148:119-149 (2012); Rachel Wellhausen, "Expropriation, Nationality and Diplomacy," Paper presented at the Annual ISA Meeting, San Francisco, April 2013).

[41]The distinction between lower-middle and upper-middle income was introduced in 1983; until then there was just one "middle income" category.

[42]Hajzler (2012).

variable (consisting three categories for the number of arbitration claims per country per year) is employed, essentially using maximum likelihood estimation. We proceed with a baseline model regressing the primary predictor variables, and then we rerun our analyses with the controls for the income, and IMF loan and Latin America dummy variables, and we also lag the effect of growth rates and inflation on our outcome variable, using a 3 and 4 years lag to see if these yield significant effects (see Table 1 in Annex 2). We then run the same models this time excluding the host countries with only one arbitration claim over the whole period (see Table 2 in Annex 2). The same regressions are run again for all countries, excluding first the cases with US investors (see Table 3 in Annex 2) and then Primary sector (see Table 4 in Annex 2). We then run the regressions excluding the host countries with only one claim (see Table 5 and Table 6 in Annex 2).

The degree of bias is strongly dependent on the number of cases in the less frequent category in maximum likelihood estimation, and since 1720 of our 2034 observations are coded as 0, we acknowledge the possibility of some bias. In this regard, we then employ a negative binomial event count model, where the dependent variable is the total number arbitration claims a country faces, and the independent variables stay the same[43] (see Table 7 in Annex 2).

Overall, we find no strong evidence that poor institutional conditions, when measured by *Polity* and *ICRG* scores, are significantly associated with investment arbitration claims. Likewise, GDP growth stays statistically insignificant in the majority of the models (GDP is significant at 0.1 level in some of them), though they do have a negative relation in all models, as expected. Inflation does not have a statistically significant relation with the dependent variable either.

However, WGI Corruption and WGI Rule of Law are statistically significant when we run the regressions for all countries, and they both have a negative relation with investment arbitration claims, as expected. WGI Regulatory Quality has a negative relation too, though it is only significant at 0.1 level. For most of the models, adding an interaction effect of GDP growth and variables measuring institutional conditions does not improve goodness of fit. Lagging GDP growth does not change the results significantly either.

We also tried introducing the terms separately, in case there is multicollinearity and partial conceptual overlap between GDP growth and Polity and ICRG scores, again containing the control variables. They again stay insignificant in the majority of the cases. Assuming that the large number of host countries with only one claim might be a reason for this result, we rerun the same regressions this time excluding the aforesaid cases, however, we do not detect a drastic change in terms of statistical significance.

As discussed earlier, we are controlling for certain variables, and in order to see if we actually get statistically significant results consistent with the literature on our control variables, we also run a basic model with regressing the control variables on our dependent variable. Consistent with our discussion, countries receiving IMF loans have a lower probability of facing investment arbitration, and the indicator is statistically significant in the majority of the cases,[44] whereas the *Income* and *Latin America* variables have a positive relation with investment arbitration claims, as expected; *Latin America* mostly yields significant effects at 0.1 level, while *Income* is statistically significant at 0.01

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[43]We employ a standard negative binomial regression model that allows for overdispersion, instead of a zero inflated Poisson (ZIP), is as it fits much better than a ZIP model.

[44]Except when we run negative binomial regression, we lose significance of the IMF variable.

level in most of the models.

Rerunning the regressions after excluding the cases with US investors and then Primary sector does not lead to a substantial change for the models with all countries, while the restricted models decrease statistical significance considerably.

As a result, we do not detect any strong and stable relation between GDP growth, inflation, WGI Regulatory Quality, Polity and ICRG scores and our dependent variable, while the WGI Corruption and WGI Rule of Law have a negative and statistically significant relation with it.

Conclusion

International investors are now regularly using the means of last resort that investment arbitration is in order to redress harmful situations occurring in host countries. In this paper, we investigate to which extent such arbitration claims are related to the materialization of two types of sources of political risk, namely severe economic situations and poor institutional conditions in host countries. We do so while explicitly keeping the predictors simple, even simplistic, and restricting the set of observations to those countries that have been targeted by investment claims more than once in the period 1995-2012. The result of our paper is that only one leg of our conceptual depiction of political risk and arbitration — namely corruption and lack of rule of law making dissuasion fail and thus leading to arbitrations — seems to have statistical significance. We can surely find claims in line with the other leg but the link seems statistically tenuous.

Yet we also have reasons to question our finding and continue empirical investigations along different lines. First, the choice of GDP growth as indicator of possible severe economic conditions is clearly overly simplistic. We need to explicitly capture the duration of economic crises. Some of the mostly used indices on such crises, however, need to be extended to all countries in our dataset. Second, given that the primary sector seems to be correlated with higher number of arbitration claims, we need to carefully investigate a possible third type of political risk, resource nationalism, or economic nationalism more broadly. In a recently published piece focusing only on claims in the oil and gas sector, we indeed found evidence that economic nationalism is often associated with the bringing of arbitration claims, but we need to expand the analysis to the whole dataset and moreover address the challenge of the most appropriate indicators for economic nationalism.[45]

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[45]For details see Cédric Dupont, Thomas Schultz, Melanie R. Wahl and Merih Angin, (2015). "Types of Political Risk Leading to Investment Arbitrations in the Oil and Gas Sector," *Journal of World Energy Law & Business*, 8(4): 337-361.

ANNEX 1: A FEW FACTS ABOUT OUR DATABASE

This study is based on a data set with the following characteristics:

- Period covered: 1972-2014

- Includes 775 investment awards (661 until 2012)

- Includes investment awards regardless of the jurisdictional basis of the arbitration:

    - investment arbitrations based on a treaty (typically a BIT, but not on multilateral treaties);

    - investment arbitrations based on a contract between the host state and the investor,

    - investment arbitrations based on the domestic legislation of the host state, when such legislation unilaterally allows the investor to file an arbitration against the government.

- Includes institutional investment arbitration (ICSID mainly, but also Stockholm Chamber of Commerce, International Chamber of Commerce, etc) and ad hoc investment arbitration (mainly under the arbitration rules of UNCITRAL).

- Encodes the following aspects of the arbitrations:

    - parties; case number; case status (pending/concluded/never commenced); composition of the arbitral tribunal (names of arbitrators); name of host state and home state of investor; region of the world of host state and home state of investor; year of filing; in favor of whom the initial award was rendered; arbitration rules governing the procedure; sector of the economy invested in (Agriculture, Banking and Finance, Construction, Electricity generation and distribution, Forestry, Hotels/Tourism/Recreation, Industry (chemicals), Industry (food), Industry (metals), Industry (other light), Industry (textiles), Industry (transport and machinery), Industry (weapons), Insurance, Media and Broadcasting, Mining, Oil/gas/petroleum, Pharmaceuticals, Real Estate Development, Sales and Trade, Services, Telecom, Transportation and infrastructure, Waste Management and Utilities, Water and Sewer); type of host country action attacked; amount claimed; most recent procedural position; year of conclusion of case if applicable; years pending; if settled, phase of the proceedings when the settlement has taken place/reason; damages awarded; percentage of the claim ultimately awarded; polity score of host state and home state (year of filing) (Polity IV Country Reports 2009); development status of host state (year of filing) (World Bank World Development Reports); number of arbitrators; nationalities of arbitrators; region of origin of arbitrators; development status of arbitrators state of nationality; annulment proceedings (ICSID only): outcome, duration, committee members.

- Sources of information:

    - For claims submitted to ICSID: ICSID website and ICSID Reports.

    - For other claims, sources include: italaw.com website; UNCTAD reports; Investment Arbitration Reporter website; Oxford University Press's Investment Claims website; Kluwerarbitration.com; Westlaw database; Global Arbitration Review; NAFTA Secretariat's

database; naftaclaims.com; ICC Dispute Resolution library; website of the Stockholm Chamber of Commerce; website of the Energy Charter Treaty secretariat; general newspapers; portfolios of law firms and arbitrators.

ANNEX 2: Regression Results

Table 1: Ordinal Logistic Regression Results for all countries

Model Variable	1	2	3	4	5	6	7
GDP growth	-	-0.021* [0.011]	-0.02* [0.011]	-0.021* [0.011]	-	-	-
WGI Corruption	-	-0.27*** [0.102]	-	-	-0.27*** [0.102]	-	-
WGI Regulatory Qual	-	-	-0.182* [0.102]	-	-	-0.180* [0.102]	-
WGI Rule of Law	-	-	-	-0.286*** [0.104]	-	-	-0.28*** [0.104]
GDP growth (t-3)	-	-	-	-	-0.017* [0.01]	-0.016* [0.01]	-0.016* [0.01]
Income	0.206*** [0.064]	0.312*** [0.091]	0.266*** [0.096]	0.329*** [0.095]	0.317*** [0.092]	0.271*** [0.096]	0.333*** [0.095]
IMF loan	-0.394*** [0.155]	-0.424*** [0.166]	-0.404** [0.167]	-0.43*** [0.166]	-0.43*** [0.166]	-0.403** [0.167]	-0.42*** [0.166]
Latin America	0.251* [0.149]	0.275* [0.159]	0.283* [0.159]	0.224 [0.16]	0.276* [0.159]	0.285* [0.159]	0.226 [0.16]
Summary statistics							
No. of observations	2034	1555	1552	1556	1553	1551	1555
Pseudo R squared	0.024	0.031	0.028	0.031	0.030	0.027	0.030

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 2: Ordinal Logistic Regression Results for the host countries with more than one investment arbitration case

Model / Variable	1	2	3	4	5	6	7
GDP growth	-	-0.003 [0.014]	-0.005 [0.014]	-0.004 [0.014]	-	-	-
WGI Corruption	-	-0.122 [0.112]	-	-	-0.143 [0.113]	-	-
WGI Regulatory Qual	-	-	-0.188* [0.113]	-	-	-0.206* [0.113]	-
WGI Rule of Law	-	-	-	-0.139 [0.112]	-	-	-0.153 [0.112]
GDP growth (t-3)	-	-	-	-	-0.017* [0.011]	-0.017* [0.011]	-0.016* [0.011]
Income	0.282*** [0.071]	0.322*** [0.097]	0.376*** [0.105]	0.337*** [0.1]	0.332*** [0.098]	0.388*** [0.106]	0.344*** [0.101]
IMF loan	-0.341** [0.159]	-0.3* [0.173]	-0.28* [0.172]	-0.3* [0.173]	-0.33* [0.174]	-0.302* [0.173]	-0.325* [0.173]
Latin America	0.263* [0.157]	0.306* [0.169]	0.303* [0.169]	0.275* [0.17]	0.301* [0.169]	0.299* [0.169]	0.227* [0.17]
Summary statistics							
No. of observations	1368	1050	1050	1050	1050	1050	1050
Pseudo R squared	0.032	0.031	0.033	0.031	0.034	0.036	0.034

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 3: Ordinal Logistic Regression Results for all countries excluding the cases with US investors

Model Variable	1	2	3	4	5	6	7
GDP growth	-	-0.02* [0.011]	-0.019* [0.011]	-0.02* [0.011]	-	-	-
WGI Corruption	-	-0.233** [0.101]	-	-	-0.236** [0.102]	-	-
WGI Regulatory Qual	-	-	-0.138 [0.103]	-	-	-0.138 [0.103]	-
WGI Rule of Law	-	-	-	-0.242** [0.104]	-	-	-0.24** [0.104]
GDP growth (t-3)	-	-	-	-	-0.018* [0.011]	-0.016* [0.011]	-0.017* [0.011]
Income	0.209*** [0.064]	0.288*** [0.091]	0.237*** [0.096]	0.3*** [0.095]	0.295*** [0.092]	0.244*** [0.096]	0.305*** [0.095]
IMF loan	-0.383*** [0.154]	-0.406*** [0.166]	-0.394** [0.167]	-0.408*** [0.166]	-0.41*** [0.166]	-0.394** [0.167]	-0.41*** [0.166]
Latin America	0.223* [0.149]	0.244* [0.159]	0.249* [0.159]	0.197 [0.16]	0.246* [0.159]	0.251* [0.159]	0.2 [0.16]
Summary statistics							
No. of observations	2034	1555	1552	1556	1553	1551	1555
Pseudo R squared	0.023	0.031	0.025	0.028	0.027	0.024	0.027

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 4: Ordinal Logistic Regression Results for all countries excluding the cases with Primary sector

Model Variable	1	2	3	4	5	6	7
GDP growth	-	-0.02* [0.011]	-0.019* [0.011]	-0.02* [0.011]	-	-	-
WGI Corruption	-	-0.252*** [0.102]	-	-	-0.26*** [0.102]	-	-
WGI Regulatory Qual	-	-	-0.163* [0.103]	-	-	-0.163* [0.102]	-
WGI Rule of Law	-	-	-	-0.264*** [0.104]	-	-	-0.26*** [0.104]
GDP growth (t-3)	-	-	-	-	-0.017* [0.01]	-0.016* [0.01]	-0.016* [0.01]
Income	0.19*** [0.064]	0.279*** [0.091]	0.232** [0.095]	0.293*** [0.095]	0.287*** [0.092]	0.24*** [0.096]	0.3*** [0.095]
IMF loan	-0.405*** [0.155]	-0.432*** [0.166]	-0.416*** [0.167]	-0.434*** [0.166]	-0.43*** [0.166]	-0.415** [0.167]	-0.43*** [0.166]
Latin America	0.236* [0.149]	0.245* [0.159]	0.255* [0.159]	0.196 [0.16]	0.247* [0.159]	0.258* [0.159]	0.2 [0.16]
Summary statistics							
No. of observations	2034	1555	1552	1556	1553	1551	1555
Pseudo R squared	0.022	0.027	0.024	0.027	0.027	0.023	0.027

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 5: Ordinal Logistic Regression Results for the host countries with more than one investment arbitration case, excluding the cases with US investors

Model Variable	1	2	3	4	5	6	7
GDP growth	-	-0.003 [0.014]	-0.004 [0.014]	-0.003 [0.014]	-	-	-
WGI Corruption	-	-0.063 [0.112]	-	-	-0.086 [0.113]	-	-
WGI Regulatory Qual	-	-	-0.118 [0.114]	-	-	-0.137 [0.114]	-
WGI Rule of Law	-	-	-	-0.08 [0.112]	-	-	-0.096 [0.112]
GDP growth (t-3)	-	-	-	-	-0.018* [0.01]	-0.018* [0.011]	-0.018* [0.011]
Income	0.285*** [0.071]	0.287*** [0.097]	0.328*** [0.105]	0.299*** [0.1]	0.296*** [0.098]	0.338*** [0.106]	0.306*** [0.101]
IMF loan	-0.323** [0.158]	-0.269* [0.172]	-0.257* [0.172]	-0.27* [0.172]	-0.295* [0.173]	-0.279* [0.172]	-0.295* [0.173]
Latin America	0.217 [0.157]	0.256* [0.169]	0.251* [0.169]	0.237 [0.17]	0.251* [0.169]	0.246 [0.169]	0.229 [0.17]
Summary statistics							
No. of observations	1368	1050	1050	1050	1050	1050	1050
Pseudo R squared	0.030	0.027	0.028	0.027	0.030	0.031	0.030

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 6: Ordinal Logistic Regression Results for the host countries with more than one investment arbitration case, excluding the cases with Primary sector

Model Variable	1	2	3	4	5	6	7
GDP growth	-	-0.001 [0.014]	-0.001 [0.014]	0 [0.014]	-	-	-
WGI Corruption	-	-0.107 [0.112]	-	-	-0.131 [0.113]	-	-
WGI Regulatory Qual	-	-	-0.159 [0.113]	-	-	-0.181* [0.113]	-
WGI Rule of Law	-	-	-	-0.118 [0.112]	-	-	-0.137 [0.112]
GDP growth (t-3)	-	-	-	-	-0.017* [0.011]	-0.017* [0.011]	-0.016* [0.011]
Income	0.257*** [0.071]	0.286*** [0.097]	0.329*** [0.104]	0.297*** [0.1]	0.294*** [0.098]	0.340*** [0.105]	0.303*** [0.101]
IMF loan	-0.351** [0.158]	-0.298* [0.172]	-0.28* [0.172]	-0.298* [0.172]	-0.33* [0.173]	-0.307* [0.172]	-0.328* [0.173]
Latin America	0.234* [0.157]	0.264* [0.169]	0.259* [0.169]	0.237 [0.17]	0.255* [0.169]	0.251* [0.169]	0.225 [0.17]
Summary statistics							
No. of observations	1368	1050	1050	1050	1050	1050	1050
Pseudo R squared	0.028	0.025	0.026	0.025	0.028	0.029	0.028

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Ordinal logistic regression performed using SPSS Statistics 23.

Table 7: Negative Binomial Regression Results

Model	1	2	3	4
	Arbitration claims	Arbitration claims	Arbitration claims	Arbitration claims
Variable	(all cases)	(excluding Primary sector)	(all cases)	(excluding Primary sector)
GDP growth	-0.006 [0.008]	-0.009 [0.01]	-0.006 [0.008]	-0.009 [0.01]
WGI Corruption	-0.3*** [0.079]	-0.233*** [0.09]	-	-
WGI Rule of Law	-	-	-0.369*** [0.08]	-0.245*** [0.089]
Income	0.386*** [0.075]	0.48*** [0.09]	0.436*** [0.075]	0.491*** [0.08]
IMF loan	-0.151 [0.124]	-0.07 [0.141]	-0.153 [0.124]	-0.072 [0.141]
Latin America	0.611*** [0.115]	0.482*** [0.131]	0.507*** [0.119]	0.422*** [0.134]
Summary statistics				
No. of observations	1555	1555	1556	1556
Log-likelihood	-1153.102	-947.991	-1150.444	-948.451
Pearson χ^2	2666.633	2626.37	2633.96	2634.628

Numbers in brackets represent standard errors; *p < .10, **p < .05, ***p < .01. Negative binomial regression performed using SPSS Statistics 23.