Arbitrators as Advisors: Evidence from Changes in Investment Treaty Design *

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Abstract

Past research on international investment agreements finds that states maintain dispute settlement procedures accessible to investors despite losing their previous investment disputes. Why do states maintain investor-friendly dispute settlement procedures regardless of their bitter experiences? We illuminate the role of lawyers in investment arbitration and argue that lawyers can advise their home states to retain accessible dispute settlement procedures at the stage of renegotiation. This paper presents an original dataset on investment arbitration practitioners by tracing investment dispute cases and the nationalities of arbitration practitioners registered in the International Centre for Settlement of Investment Disputes (ICSID). Using the dataset, we show that states' losses from investment disputes increase the supply of arbitration practitioners from those states. We then show that a dyad of states with a higher number of arbitration practitioners is more likely to retain dispute settlement procedures accessible to investors. The reliance on experts can reshape and professionalize international cooperation beyond the purview of states.

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Investment arbitration is costly for states. On average, a state could spend around four to five million dollars on legal counsel and approximately 45 million dollars in awards to investors for damages per case (Franck, 2019). Investment arbitration can also significantly restrict the regulatory space of states in terms of the policies they can implement (Thompson et al., 2019). Nevertheless, we observe states retaining or even strengthening procedures that allow investor access to arbitration, even when they have opportunities to revise international investment agreements. Why do states not weaken dispute settlement provisions despite the considerable cost?

Existing studies find that during renegotiations, states often modify substantive provisions but do not alter procedural provisions directly linked to dispute settlements (Thompson et al., 2019). Substantive provisions encompass clauses that define states' obligations with flexibility and exemptions. Procedural provisions, on the other hand, pertain to articles governing dispute settlements. For instance, such procedural provisions may include requirements for states to arbitrate in specific venues, durations for which these agreements are valid, and conditions under which investors can initiate arbitration without express consent, among other aspects. Previous research indicates that when states lose in investor-state dispute settlements (ISDS), they tend to amend substantive provisions in their favor but do not make changes to procedural provisions. Referring to this trend, Thompson et al. (2019, p.875) wrote, "Even in the aftermath of investment disputes, parties to international investment agreement renegotiations seem relatively satisfied with the ISDS procedures but pursue greater regulatory space in substantive rules."

Then why do states stick to international arbitration despite their previous losses? We argue that the source of legal advice to states can explain their continued reliance on international arbitration. We note that arbitration practitioners, who either adjudicate or represent states or investors within arbitration, often provide expert advice to their home states during renegotiations. We theorize that arbitration practitioners, taking advantage of their dual roles as a representative for a state and an arbitrator of an investment dispute,

would be more likely to advise their home states to maintain investor-friendly procedural provisions. In this manner, they can justify their continued involvement and influence within the investment regimes.

To investigate how lawyers shape the design of investment treaties, we trace the text of IIAs before and after renegotiations. Among the 161 IIAs that have been renegotiated as of June 20, 2023, the United Nations Conference on Trade and Development (UNCTAD) mapped the features of 83 IIAs.[1] We analyze the content of the 83 pairs of IIAs ($83 \times 2 = 166$ IIAs), and measure the *changes* in investors' accessibility to ISDS. When accessibility is high, the renegotiated IIA text eases investors' use of ISDS to settle investment disputes. Therefore, changes in accessibility capture the extent to which the renegotiated text lowers the institutional hurdle for an investor to rely on legal dispute resolution.

Our findings are twofold. First, when a state is sued by investors, the experience increases the number of arbitration practitioners in the state (*The Rise of Lawyers*). Second, the rise of lawyers from ISDS has an effect on the design of investment treaties: When a dyad of states with a larger pool of arbitration practitioners renegotiate their IIAs, accessibility to ISDS increases compared to the IIA prior to renegotiation (*Arbitrators as Advisors*). This outcome holds after controlling for the conventional wisdom that states learn from previous losses in ISDS (Poulsen and Aisbett, 2013; Manger and Peinhardt, 2017). Our findings suggest that the rise of lawyers can increase investors' accessibility to legal dispute resolution.

This explains why a bitter experience in an ISDS does not necessarily lead states to block the channel of settling disputes through international law. A loss in an ISDS not only informs states that an ISDS can compromise sovereignty, but also invites the rise of lawyers by increasing demand for those who practice arbitration. The rise of lawyers is endogenous to states' initial decision to adopt ISDS, and they preserve and strengthen their authority by voicing expert opinions throughout the process of redesigning investment treaties. The reason

[1]The database is publicly available at the UNCTAD International Investment Agreements Navigator (https://investmentpolicy.unctad.org/international-investment-agreements).

states maintain their investor-friendly ISDS provisions despite losing in arbitration might not be because they are "relatively content with" dispute settlement procedures (Thompson et al., 2019, p.875). Rather, it can be explained by the increased supply of lawyers and states' reliance on experts equipped with legal knowledge.

Our findings shed light on lawyers as a crucial actor in shaping treaty design. By linking the rise of lawyers and subsequent changes in the design of investment treaties, we illuminate the long-lasting consequences lawyers have on the design of international cooperation. Lawyers as experts can justify their importance by controlling the way investment disputes are settled. This justification becomes even more valid as investors use ISDS more easily and widely. Our results contribute to the burgeoning literature that sheds light on the agency of lawyers (Scott, 2007; Pavone, 2022; St.John, 2018). Whereas existing studies examine ways in which personal characteristics and network structure of lawyers affect arbitration outcomes (Donaubauer et al., 2018; Langford et al., 2017; Puig, 2014; Rao, 2021; Waibel and Wu, 2012), we illuminate lawyers' roles as advisors in designing investment treaties. Those who accumulated expertise in investment arbitration can be invited as advisors and can provide opinions on how states should revise investment treaties. The lawyers' role is not limited to settling investment disputes that states and investors brought up. Lawyers' influence can be extended to the design of treaties.

We also contribute to the study of investment arbitration by creating an original dataset of arbitration practitioners. To explain how lawyers shape the design of investment treaties, we construct a dataset that documents individual characteristics of 478 arbitration practitioners registered with the International Centre for Settlement of Investment Disputes (ICSID) from 1974 to 2022. We systematically code their nationality, gender, educational background, arbitration cases, detailed role in each case, which party appointed these arbitrators, and the names of their affiliated law firms. We offer future researchers access to our dataset to help them further analyze the role of lawyers in international cooperation.

More broadly, our study illuminates the consequences of states delegating the enforcement

and design of international cooperation to a group of experts. Initially appointed experts can enlarge their presence by advising states to modify a treaty consistent with their belief or interests. At this stage, experts who are invited to enforce rules also can design the rules in favor of their beliefs or interests. As a result, experts can crowd out competing experts by institutionalizing specific forms of international cooperation.

The paper proceeds as follows. The first section introduces our puzzle based on the existing literature. Next, the theory section introduces the role of lawyers as treaty designers. We also explain how investors' easier access to arbitration can strengthen lawyers' authority as experts in the investment regime. The following section presents how we measure investor accessibility to arbitration. The data section lays out how we collect information on arbitration practitioners. The results of the analyses are followed. The final section discusses the implications of our findings.

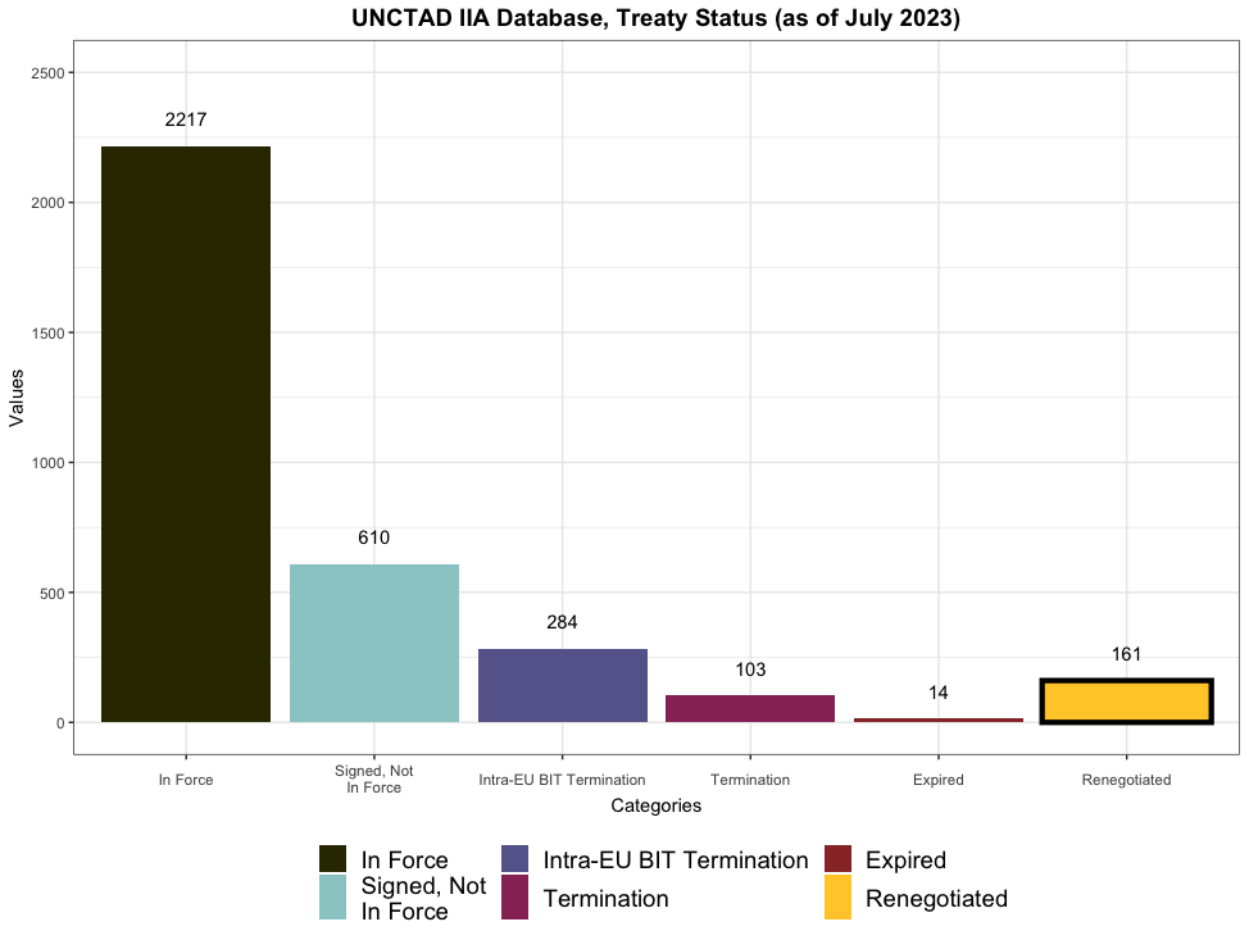
The Puzzle

When investment treaties grow old, states can renegotiate them.[2] In fact, these renegotiations are taken seriously as substantive changes in the IIA occur during these renegotiations (Interview with Alias John, February 20, 2024). Only a handful of countries, such as Bolivia, Ecuador, India, South Africa, Indonesia, Poland and Italy, have unilaterally terminated their IIAs. Given that a substantial number of IIAs were signed in the 1990s-2000s, and require updating in its contents to reflect changes of the IIA design, states that have not updated their investment treaties may renegotiate them in the near future. As of July 2023, there were a total of 3,389 Bilateral Investment Treaties, with 2,217 in force and 610 yet to be in force (Figure 1). Five-hundred-sixty-two IIAs had been reformed, and 284 of them were terminated due to accession to the European Union. One-hundred-sixty-one IIAs had been

[2]IIAs may be automatically renewed after the initial period of 10-15 years, but with updates in the IIA templates according to different periods (Jandhyala et al., 2011), such as the development of IIA design to include more precise indirect expropriation clauses, states may prefer to renegotiate IIAs.

renegotiated.[3]

Figure 1: Status of Investment Treaties



A learning mechanism is often used to explain why states update their investment treaties and how they modify their treaty designs. States learn from past experience and reflect on it when they renegotiate treaties (Manger and Peinhardt, 2017; Haftel and Thompson, 2018; Haftel et al., 2023). States that are frequently involved in investment settlement disputes tend to renegotiate their treaties (Haftel and Thompson, 2018) and revise them to increase

[3]This information is based on the United Nations Conference on Trade and Development (UNCTAD) IIA. UNCTAD IIA has a mapping project that also involves analyzing different elements of the IIAs from 2013 to 2016 with the participation of 150 students from 30 universities in 23 different countries. Approximately 2,500 IIAs have been mapped. Therefore, the latest update took place in 2016.

domestic regulatory capacity (Blake, 2013; Thompson et al., 2019; Broude et al., 2016). Increasing domestic regulatory capacity helps states protect their sovereignty.

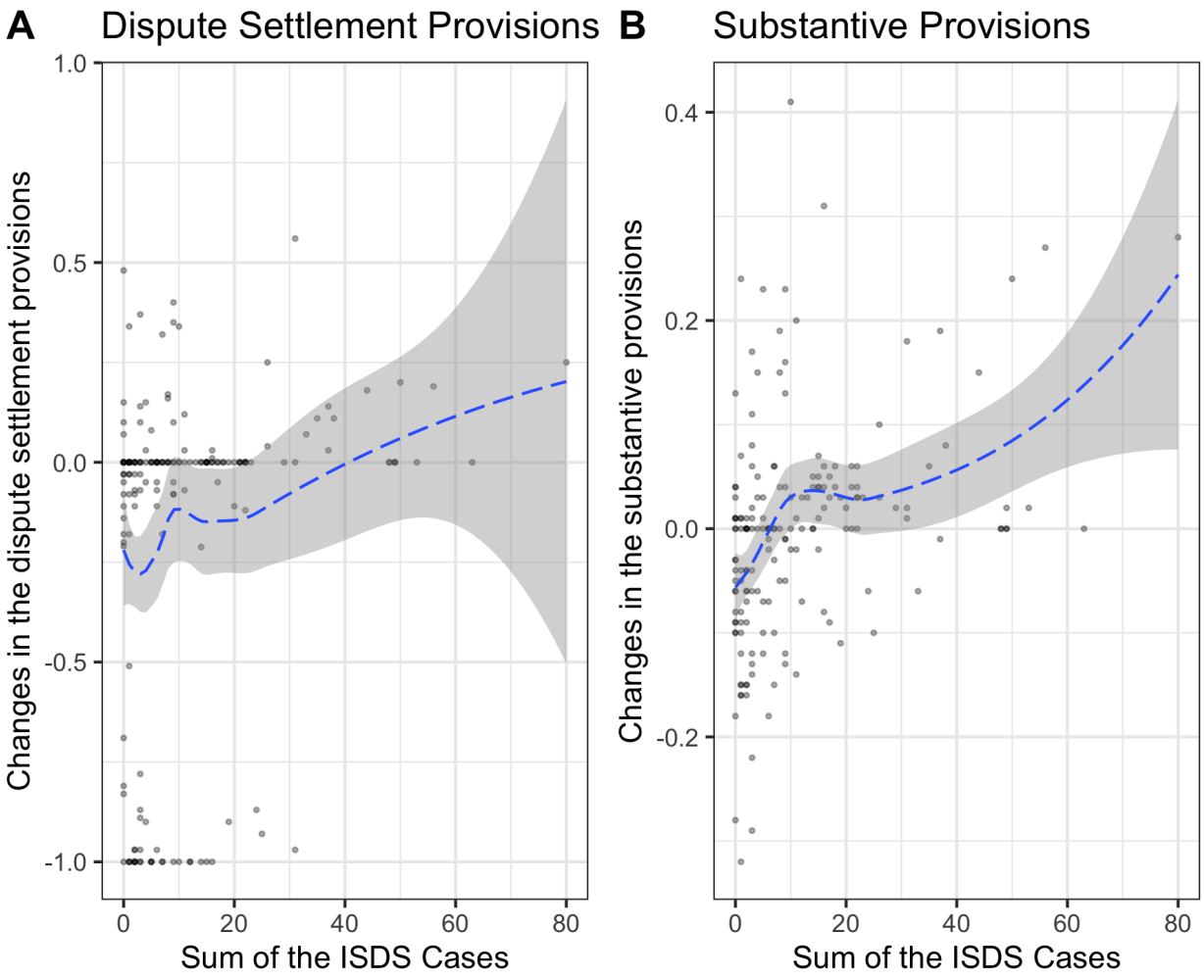


Figure 2: Past Involvement in ISDS and the Changes in Treaty Designs

If states learn from past experience, those that lose a dispute settlement would design a future treaty that discourages claims from investors. If states learn that a dispute settlement provision is risky, it would serve their interests to make dispute settlements less dependent on arbitration. Contrary to this expectation, we observe that states maintain or increase provisions in IIAs that allow investors easier access to ISDS. Figure 2 shows this anomaly. The x-axis in Figure 2A and 2B is the total number of ISDS cases in which signatories participated before renegotiating their IIA. The y-axis shows changes in the dispute

settlement provisions and substantive provisions, respectively. The greater the changes in the substantive and dispute settlement provisions, the more states modify IIAs to increase their domestic regulatory capacity (Thompson et al., 2019). States modify their substantive provisions in response to backlash from dispute settlements (Figure 2B), but the dispute settlement provisions remain largely unresponsive to the sum of the ISDS cases (Figure 2A). What can explain this anomaly?

Lawyers as Treaty Designers

We pay attention to lawyers as actors to address the puzzle. Lawyers develop and maintain international law, and become rule-makers transcending domestic and international boundaries. As Cohen (2013) notes, lawyers in international law "maneuver between demands of citizenship in professional communities, communities of practice, and states."

The Growing Reliance on Lawyers

As states and investors engage in arbitration procedures, the states rely on the expertise of lawyers. Their dependence can induce greater professionalization, which can be defined as "the assimilation of the standards and values prevalent in a given profession" (Black, 1970, p. 865). Indeed, the rise of new constituencies such as lawfirms, lawyers, and investors increasingly make states' exit from investment treaties even more difficult (St.John, 2018, 235). Cohen (2013) describes the professionalization of lawyers in international disputes as follows:

> "The more courts, tribunals, and expert bodies in international law, the more legal specialists needed to respond to them; the more lawyers in the practice of international law, the more force the decisions of courts, tribunals, and expert bodies will have (p.1038)."

The increased reliance on lawyers crowds out other types of experts at the international level. International law is one of many options used to resolve disputes (Collier and Lowe, 2000, p.20). When competing experts are crowded out, alternative ways to resolve disputes are also crowded out (Dezalay and Garth, 1996). Prior to when investors had easier access to ISDS, "[...] there was a time—not so long ago—when foreign investment disputes were not settled using investor-state arbitration. Such conflicts were dealt with either directly by the investor at the host state's domestic courts or between the investor's home state and the host state through the institution of diplomatic protection. Under special treaties, even home state extraterritorial jurisdiction was recognized at the host state" (Polanco and Lazo, 2019, p.1).[4] These prior processes, such as domestic processes or diplomatic protection, required reciprocity between the host country and the investors' home country.[5]

The rise of lawyers has made diplomacy based on reciprocity less useful in settling investment disputes. Poulsen and Aisbett (2016, p.90) explain that the surge in investment arbitration coincides with diminished influence of diplomacy on bilateral investment treaties. Diplomats, recognizing substantial costs associated with investment arbitration, have grown more cautious in advocating for their government to sign such treaties (Pauwelyn, 2015). Simultaneously, local legal institutions are being supplanted by transnational legal institutions. The growing popularity of arbitration has weakened the link between domestic rule-of-law and foreign direct investment by providing an extra-judicial system for contract enforcement (Allen, 2023). In the event of an investment dispute, investors now turn to arbitration practitioners instead of relying on diplomats or domestic courts.

[4]Home state here refers to the state from which investors are from.

[5]Reciprocity has been proven effective especially in a number of issue areas. For instance, reciprocity in international trade—the norm of one country agreeing to reduce the level of protection in exchange of reciprocal concession from the other country—successfully lowered trade barriers among contracting parties in the General Agreement on Tariffs and Trade (GATT) (Bagwell and Staiger, 1999).

Transcending the Domestic-International Boundaries

At the international level, lawyers work in international organizations and international institutions designed to settle investment disputes. When doing so, lawyers play a wide range of roles, such as a witness to another arbitration, legal counsel, and tribunal secretary (Langford et al., 2017). Lawyers strengthen their transnational legitimacy by maintaining close ties to the business world and academia (Grisel, 2017, p.821). Investment arbitration is "a niche field in which lawyers end up knowing each other in the field with around ten years of experience" (Interview with Alias Ross, June 5, 2023).[6] As the field is a specialty, powerful and influential lawyers, among others, are observed to "double hat" (Langford et al., 2017; 11th Annual Forum of Developing Country Investment Negotiators, 2018). This means that lawyers who are currently arbitrating also serve as legal counsel to a country or investors in another arbitration within the same institution (Hranitzky and Romero, 2010).

At the domestic level, lawyers work in foreign ministries, universities, and law firms. Upon requests from states, these lawyers also advise states on how to design investment treaties. They serve as "treaty designers" when IIAs are drafted or renegotiated. States invite experts in the field of investment arbitration to offer their advice on a particular provision of an investment treaty (Interview with Alias Rebecca, June 9, 2023).

Curriculum vitae of lawyers confirm the dual roles of lawyers as international and domestic actors. Among many listed in the Appendix[7] table 1 briefly provides two examples of individual lawyers that serve as both an experienced arbitration practitioner, and advisor to the state. Christophe Bondy, a partner at Steptoe Lawfirm, was involved in cases at ICSID and United Nations Commission on International Trade Law (UNCITRAL) as an arbitration practitioner. He also served as lead counsel to Canada in multiple North American Free Trade Agreement (NAFTA) Chapter Eleven arbitration cases. At the domestic level,

[6]Table A.5 in the Appendix presents the list of interviewees.

[7]Please refer to the Appendix section List of Lawyers and Law Firms Serving Dual Roles

Name	Lawfirm	Experience as Arbitration Practitioner	Experience as Advisor
Christophe Bondy	Steptoe	ICSID NAFTA UNCITRAL	Lead Counsel to Canada in multiple NAFTA Chapter Eleven Arbitrations Senior Counsel to Canada in the Negotiation of the Canada-European Union Comprehensive Economic Trade Agreement
Patrick W. Pearsall	Allen & Overy	ICSID HKIAC (Hong Kong International Arbitration Centre) KCAB (Korean Commercial Arbitration Board)	US State Department, Chief of Investment Arbitration Negotiation of the investment provision in the TPP US China Bilateral Investment Treaty

Table 1: Arbitration Practitioners Transcending the Domestic-International Boundaries

Christophe Bondy represented the government of Canada as senior counsel in negotiation of the Comprehensive Economic and Trade Agreement between Canada and the European Union. Similarly, Patrick W. Pearsall oversaw arbitration cases in ICSID and Hong Kong International Arbitration. At the domestic level, Patrick W. Pearsall represented the government of the United States, and negotiated the investment provisions in the Trans-Pacific Partnership Agreement as well as the bilateral investment treaty between the US and China.

The Motivation of Investment Arbitration Practitioners

Arbitration practitioners have shared beliefs about how to resolve investment disputes regardless of where they work. For them, international law is a common language that leads to a shared understanding that international law should be the means to settle an investment dispute. Although a large majority of international disputes are settled through negotiation (Collier and Lowe, 2000, p.20), arbitration practitioners would prefer dispute settlement based on international law if that is a viable option (St.John, 2018). Unsurprisingly, arbitration practitioners often discover that their perspective on the world aligns more closely with lawyers from other nations than with politicians from their own countries (Collier and

Lowe, 2000, p.3).

Arbitration practitioners generally agree that resorting to international law is the best way to protect investors in foreign countries. If they believe in a law-based dispute settlement, they would advocate for the continued use of ISDS. Indeed, many arbitration practitioners explicitly promote the institutions of ISDS. For instance, many established arbitrators are members, or are in leadership positions, at the International Council for Commercial Arbitration (ICCA), a non-government organization devoted to promoting the use of arbitration.[8] ICCA participates in the UNCITRAL working groups as an observer and represents arbitration practitioners' views on how ISDS should be reformed.[9]

Although there is an ideational motivation that drives these investment arbitration practitioners to prefer increased accessibility to arbitration, there are also significant material interests that further this agenda. Material interests refer to the incentives for arbitration practitioners to maximize their profits by expanding their career opportunities. Investment arbitration is a lucrative business. At maximum, arbitrators can be paid 500 US dollars per hour (Aceris Law LLC). As the legal work required during an arbitration is between 1,500 hours and 4,500 hours, for one arbitration, an arbitration practitioner would be making a hefty sum of 2,250,000 US dollars. As such, material motivations can exist for the arbitration practitioner as an individual, but also more broadly for the group that depends on the continuation of these procedures.

Whether the interests are purely ideational or material, or a combination of both, what arbitration practitioners want is an increase in global demand for investment arbitrations. When there are higher demands for investment arbitration, arbitration practitioners with ideational interests gain more opportunities to exercise their shared belief while arbitration practitioners motivated by material interests acquire venues to expand their careers.

[8] As of January 2023, 923 international investment lawyers are members of ICCA.

[9] One of the authors observed UNCITRAL's 56th session held in Vienna, Austria, on July 14, 2023.

Designing Accessibility to ISDS

Arbitration practitioners who frequently practice international investment arbitration are invited by states to advise on how to re-design investment treaties. Renegotiation involves more than a mere mechanical extension of a treaty's expiry date, as it can entail in-depth discussions with a partner state on how to revise key provisions in an original IIA (Interview with Alias John, February 20, 2024). As such, states either hire lawyers in the field of international investment as internal legal counsel or invite them as external experts.

By serving as treaty designers, arbitration practitioners can realize their objective of increasing demands for arbitration. More specifically, when arbitration practitioners advise states on how to re-design an investment treaty, they would recommend increasing investors' accessibility to ISDS, even when reliance on legal mechanisms is optional. By doing so, arbitration practitioners safeguard the continuation of dispute settlement procedures while protecting states that want to create state regulatory space through altering substantive provisions (Thompson et al., 2019). The popular usage of ISDS would generate legal precedents that are often written in language that is less clear and accessible to a larger audience (Pauwelyn, 2015). The accumulation of precedents would increase the demand for arbitration practitioners in investment arbitration.[10]

Contrary to a standard bargaining situation where two states decide on how to allocate a fixed amount, lowering the institutional hurdle to access ISDS is not a zero-sum game. The shared belief and material interests would generate consensus among arbitration practitioners representing both sides of a renegotiation. Therefore, even if two states that are renegotiating have conflicting views about how to modify substantive provisions in international investment agreements, arbitration practitioners on both sides might agree on making investment arbitration more accessible.

Relying on legal dispute resolution does not conflict with a state's interests, as increased

[10] Although investment arbitration is not meant to be bound by precedents, a ruling from one investment dispute settlement is often echoed in subsequent cases (Norton, 2018)

accessibility does not necessarily mean the state will lose in the dispute. The increase in accessibility to ISDS simply allows investors to bring states to arbitration, but does not ensure the outcome being favorable to them. In fact, states may have unclear preferences about legal dispute resolution. Substantive provisions are visible and have direct impact on domestic stakeholders in the policy-making space such as security or the environment.[11] However, procedural provisions which involve discussing whether agreements will be negotiated via ICSID, or UNCITRAL, or whether the sunset clause will be 5 years or 10 years, are more technical and routine in nature, requiring expertise in investment arbitration to determine clear directions. As such, procedural provisions in IIA negotiations are often lower priorities compared to substantive provisions, and discussions related to procedural provisions are pushed to the last minute (Interview with Alias Mark, May 25, 2023).

Empirical Expectations

We derive two-step hypotheses based on the rise of lawyers[12] as well as lawyers' growing involvement in designing treaties. First, we argue that a state's involvement in ISDS should increase the supply of arbitration practitioners from that state *(The Rise of Lawyers)*. We expect that past involvement in investment disputes alarms states about the costs of losing disputes and leads them to seek experts in investment arbitration. The high demand of lawyers would increase the supply of lawyers from those states.

If a state's involvement in ISDS increases the supply of lawyers from that state, we would be more likely to observe lawyers from that state practicing arbitration in other investment disputes. We define a new arbitration practitioner as someone who participated in an ICSID case for the first time as an arbitrator, conciliator, consultant, counselor, committee mem-

[11]Through renegotiations, states are able to create carve-outs for key issue areas when defining the scope of direct and indirect expropriation.

[12]Continuing from this section, we use lawyers and arbitration practitioners interchangeably.

ber, or president.[13] A minimum of five investment arbitration practitioners are required on a Tribunal to settle one investment arbitration: arbitrators chosen by the respondent, the complainant, one arbitrator serving as the president, and counsel for both the respondent and the investor. Co-national arbitrators (arbitrators from the country that has experienced ISDS procedures) are generally unable to serve as arbitrators of cases in which their countries are involved for ethical reasons.[14] These institutional characteristics of arbitration suggest that the new legal experts emerging out of a state's involvement in ISDS would fill in various arbitration-related roles in a future Tribunal.

Hypothesis 1 (The Rise of Lawyers): The experience of being involved in an ISDS procedure increases the supply of arbitration practitioners from those states.

Second, we argue that the rise of lawyers has consequences on the design of investment treaties. When states renegotiate IIAs, lawyers can be invited to advise states on how to redesign treaties. We expect that lawyers will advise states to further increase investor accessibility to dispute settlement procedures *(Arbitrators as Advisors)*. If lawyers advise states to lower an institutional hurdle for legal dispute resolution, we should observe increased accessibility to ISDS after the treaty negotiation. Our two-step argument is summarized in Figure 3.

Hypothesis 2 (Arbitrators as Advisors) When states have a larger pool of co-national arbitration practitioners, states are more likely to retain accessible ISDS procedures.

[13] Alternatively, one can define a new arbitration practitioner as someone who is newly registered to the ICSID panel roster. Our definition is conservative in the sense that there are a substantial number of lawyers who are registered to the panel roster but have not participated in an actual ICSID case.

[14] According to the ICSID convention article 39 it states: "The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties."

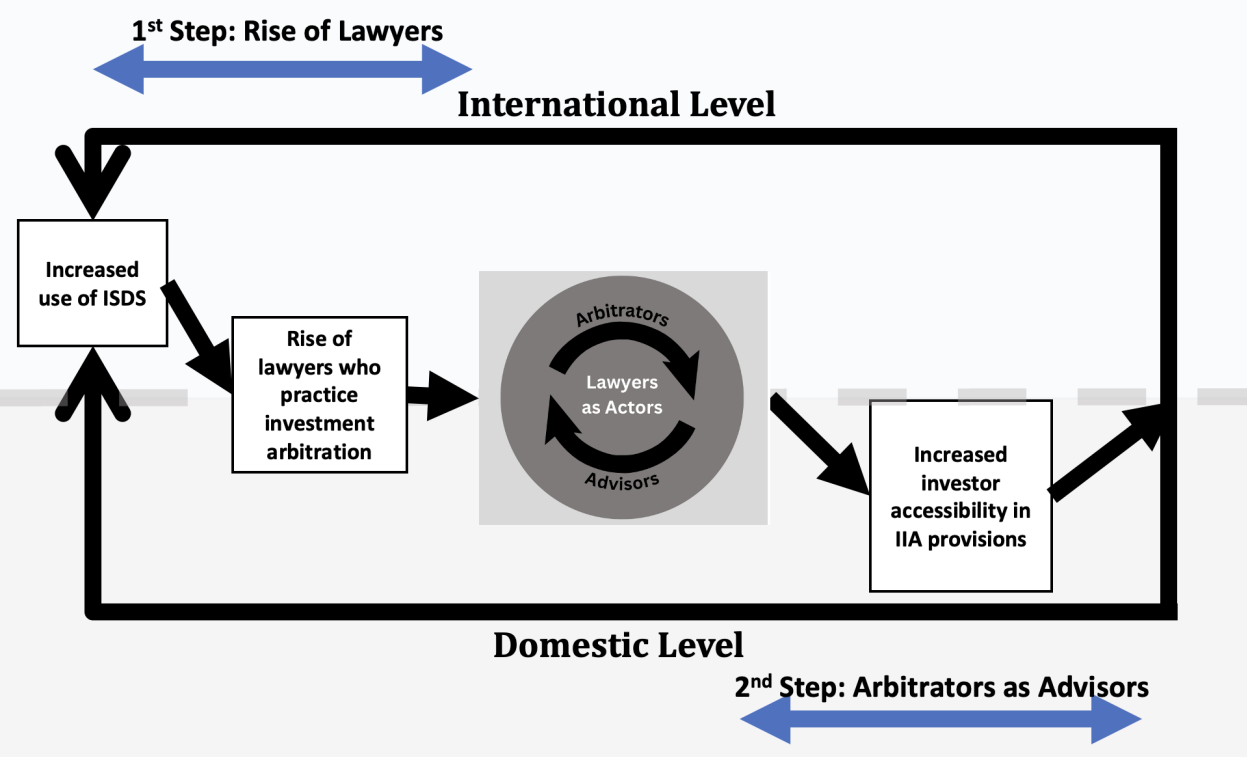


Figure 3: Lawyers as Arbitrators and Advisors

Measuring Accessibility to ISDS

To test the two hypotheses, we need to identify the extent to which states make procedural provisions in IIAs more accessible to investors. We measure the *changes* in accessibility by coding procedural provisions of IIAs before and after treaty renegotiation. As stated above, IIA provisions that ease investors' access to ISDS procedures could increase the likelihood of investors opting for investment settlement disputes at the international level rather than attempting to settle the issue with states beforehand. Popular usage of ISDS leads to the accumulation of precedents in investment arbitration, and this increases demand for lawyers who can interpret those precedents.

We define accessibility to ISDS as the procedural ease through which investors can seek recourse through ISDS or related processes. Here, we focus on the specific elements that

enable investors to access ISDS and related procedures at the start of the process. More specifically, we do not consider outcomes that are rendered; rather, we focus on whether investors can begin the process of arbitration in terms of jurisdiction and procedure through the legal rights awarded within the IIA. Accessibility, simply put, is whether the IIA includes provisions that allow investors "to get a foot in the door."

For instance, investors who must first exhaust all options at the domestic level experience lower levels of accessibility than those who can sue states through international arbitration venues immediately. Similarly, after treaties have been terminated, IIA sunset clauses may allow investors access to suing a state when their rights are infringed; sunset clauses that are absent or shorter in length may leave investors unable to seek recourse. Therefore, greater accessibility means more room for investors to seek remedies through easier entry to arbitration or related processes through legally awarded rights. In contrast, lower accessibility indicates that investors would have to overcome significant hurdles to access investment arbitration and related procedures.

Data

In this section, we explain how we construct two original datasets to test *The Rise of Lawyers* and *Arbitrators as Advisors*.

Dataset on ISDS Accessibility

We code different levels of investor accessibility to ISDS. The accessibility score is based on adding elements that expand the rights of investors to resort to means of arbitration or related remedies. Several provisions promote or discourage ISDS accessibility. They outline whether investors can seek arbitration venues, whether they must exhaust domestic court options, whether having a case in one court would prohibit investors from seeking a similar

case at a different court, among others.[15]

Accessibility as a concept not only focuses on the procedures directly related to ISDS, but expands to include treaty provisions that broaden the application and use of IIAs.[16] For instance, provisions related to sunset clauses may lengthen the time to which investors can seek recourse once an IIA is established. Accessibility scores consider provisions that lengthen and expand the application of IIAs more broadly, which have not been included in Thompson's (2019) SRS ISDS score which solely focuses on procedural issues.[17] Furthermore, we have excluded elements that deal with procedural matters after arbitration, as our focus is on examining whether investors can initiate ISDS and related procedures with greater ease.[18]

We code the changes in ISDS accessibility based on the information provided on the United Nations Conference on Trade and Development (UNCTAD) website. The website maps various elements of investment treaties that were input by research assistants in law schools around the world. While there are 161 renegotiated IIAs as of June 20, 2023, the number of treaties that are mapped in the UNCTAD database is smaller. Because we are interested in *changes* in ISDS accessibility, we also subtract investment treaties that UNCTAD did not map before and after renegotiation. In total, we calculate the changes in ISDS accessibility for 83 pairs of IIAs and find significant variations (Figure A.9).

The non-standardized accessibility score varies from the minimum score of -3 to the maximum score of 26. For convenience of interpretation, we standardize the accessibility score that varies from 0 to 1. As our focus is on how states modify provisions related to

[15]See Tables A.4a, A.4b, A.4c, A.4d in Appendix for detailed coding rule.

[16]The scope of accessibility to ISDS is more expansive than what is understood in Thompson et al. (2019) as ISDS measures. A detailed explanation of how accessibility to ISDS differs from the measure of Thompson et al. (2019) is described in Apendix A.6.

[17]This is included in the SRS substantive score.

[18]See A.6 for a more detailed explanation of the difference between SRS and accessibility scores.

ISDS, we calculate the changes in the accessibility score for each renegotiated investment treaty. Figure 4 presents the distribution of the changes in the ISDS accessibility scores (Δ *ISDS Accessibility*). Δ *ISDS Accessibility* is based on a standardized measure that varies from -1 to 1. Positive values of Δ *ISDS Accessibility* thus indicate an increase in accessibility to ISDS, negative values indicate a decrease in accessibility to ISDS, and zeros mean no change after a renegotiation.[19]

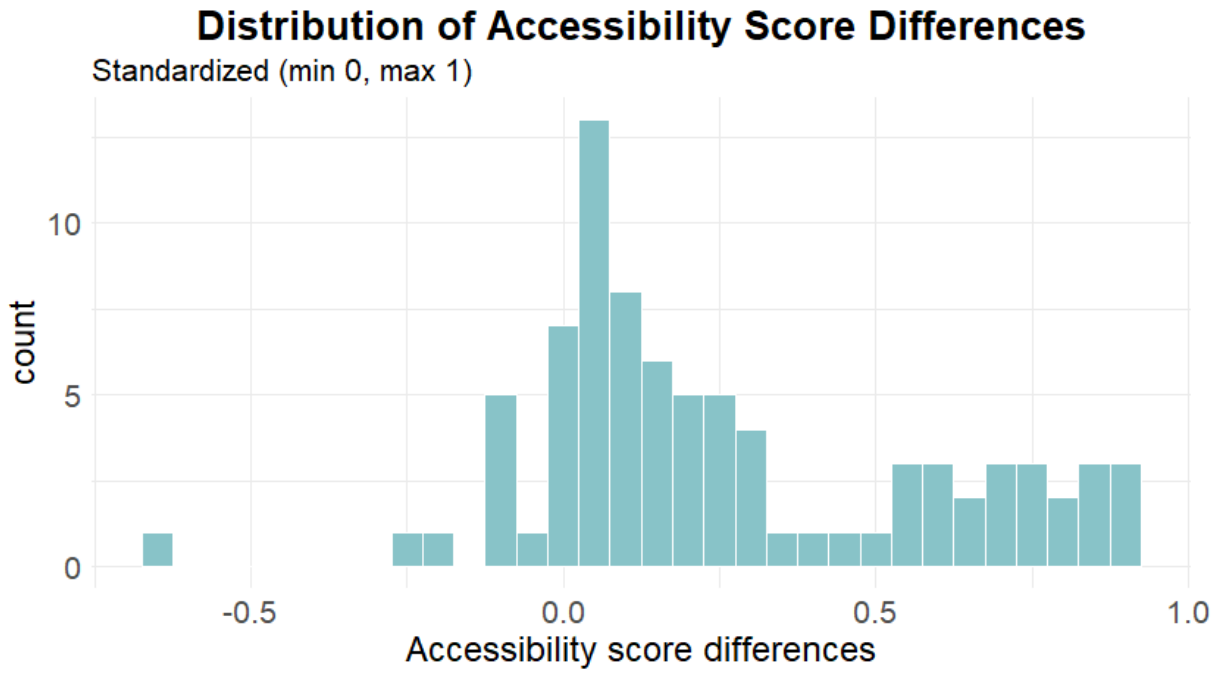


Figure 4: Distribution of Changes in the Accessibility Score

[19] As the non-standardized accessibility score varies from -3 to 26, changes in the non-standardized accessibility score range from -29 to 29.

Dataset on Arbitration Practitioners

One empirical challenge in studying lawyers in the investment regime is to quantify the population of lawyers in investment arbitration. To the best of our knowledge, there is no professional association that maintains a list of investment arbitration practitioners around the world. We overcome this challenge by constructing an original dataset of arbitration practitioners registered in ICSID, which we use to analyze the growth and composition of lawyers.

The ICSID is a long-standing adjudication institution dedicated to settling international investment disputes since 1972. On its website, the ICSID publishes information about arbitration practitioners, which we refer to as lawyers appointed to the ICSID Panel (Figure A.2). The ICSID Panel is a roster of potential ICSID arbitrators and conciliators selected by ICSID member states.[20] The panel members have "high moral character and recognized competence in the field of law, industry or finance, who may be relied upon to exercise independent judgment."[21] Parties to the investment disputes select arbitrators and conciliators from this ICSID Panel.[22] Most of the ICSID Panel members in our dataset previously participated in an ICSID arbitration or conciliation case as an arbitrator, conciliator, consultant, counselor, committee member, or president. These arbitration practitioners can remain on the list of ICSID Panel members for renewable six-year periods.[23]

ICSID is the leading institution in the field of investment arbitration and a majority of investment disputes are settled through the institution. Out of 1,229 ISDS cases registered

[20]For a list of ICSID Panel members refer to: https://icsid.worldbank.org/about/arbitrators-conciliators/database-of-icsid-panels

[21]ICSID Convention Article 14(1).

[22]However, states and investors could also select arbitrators from outside this ICSID Panel if they wish to do so.

[23]ICSID Convention Article 15.

in the UNCTAD database as of July 2022, 761 (67%) were arbitrated in ICSID.[24] While the dataset does not cover practitioners involved in disputes settled at other locations, their absence is not likely to lead to a skewed representation of arbitration practitioners.

While there are rich datasets on arbitration cases and treaty features of IIAs,[25] much less attention has been paid to arbitration practitioners as data points (Langford et al., 2017). We collect the information of individual arbitration practitioners similar to the approach of Puig (2014), but our dataset is distinct in two ways. In comparison to Puig (2014), we additionally collect information of arbitration practitioners such as the names of their affiliated law firms and educational background.[26] Our dataset's coverage of arbitration practitioners is also more extensive, ranging from arbitration practitioners who participated in ICSID cases from 1974 to 2023.[27]

We collect information about individual arbitration practitioners from the ICSID and other websites that include their: name, nationality, gender, previous experience in ICSID

[24] Among 1,229 ISDS cases, 82 lack sufficient data about their arbitration's location; 67% represents those with available data (database accessed in June 2023)

[25] Existing datasets on investment arbitration have largely focused on (1) bilateral investment treaties and their texts and (2) the outcome of cases that have been settled through ISDS. The most comprehensive dataset on investment arbitration is provided by the United Nations Conference on Trade and Development (UNCTAD) International Investment Agreement Navigator. This dataset contains information about 2,827 bilateral investment agreements and 439 treaties with investment provisions, as well as a comprehensive list of ongoing and concluded ISDS cases (accessed in June 2023).

Besides the UNCTAD database, existing datasets provide information about either the IIAs or ISDS cases. The datasets on IIAs include: translations of treaty texts with categorization of legal elements (Alschner, 2017; Alschner et al., 2021), bilateral investment and FDI flows (Tobin and Rose-Ackerman, 2011), state regulatory space of IIAs (Thompson et al., 2019), instances of bilateral investment treaties renegotiations (Huikuri, 2023), and design features of IIAs (Allee and Peinhardt, 2014; Berge, 2020; Zhu, 2019). The other group of datasets documents the ISDS cases and their outcomes (Schultz and Dupont, 2014), ISDS cases and firm-level bilateral investments (Wellhausen, 2019), and ISDS cases at the arbitrator vote level that concentrate on whether an arbitrator favors one side of the arbitration by observing their votes (Rao, 2021). Similar information on investment arbitrators is offered by private companies such as IAreporter (`https://www.iareporter.com`) and Investor State Law Guide (`https://new.investorstatelawguide.com`), but are only available through paid subscriptions.

[26] Puig (2014)'s data includes information on the name of the case, date of registration, tribunal's composition, names of arbitratior's, national origin, date of appointment, gender, method of appointment, and the subject matter of the case.

[27] Puig's dataset features arbitrators in ICSID proceedings from 1972 to February 2014.

proceedings and their role in each case, education, and the names of their affiliated law firms.[28] We gather career and biographic information of 478 arbitration practitioners—the universe of panel members registered in ICSID as of June 2023. The arbitration practitioners in our dataset participated in 4,035 ICSID proceedings from 1974 to 2023. In the following sections, we explain how we use the datasets to test our empirical expectations.

Results

The Rise of Lawyers

As a first step, we show that the rise in the number of investment disputes triggers the rise in the number of arbitration practitioners. The pattern is observed both globally and locally. At the global level, as more investors use ISDS to resolve investment disputes, the number of lawyers increases. The dotted line in Figure 5 is the over-time trend of entry of new arbitration practitioners from 1974 to 2022. In Figure 5, the solid line represents the count of investment disputes registered in ICSID. In years that countries experienced more investment disputes, we observe new practitioners entering the field of investment arbitration. The number of ISDS cases initiated in a given year is highly correlated with the number of newly registered arbitration practitioners, with a Pearson correlation coefficient of 0.63 ($p < 0.001$). Figure 6 presents the cumulative sum of arbitration practitioners. It steadily increases from 1974 to 2023, with a significant increase in 2004. The timing coincides with a surge of cases initiated with ISDS as shown in figure 5, reaffirming that the popularity of ISDS is largely responsible for the rise of lawyers.

[28]The nationality collected is the citizenship of an arbitration practitioner, not the country that nominated an arbitration practitioner as the panel member.

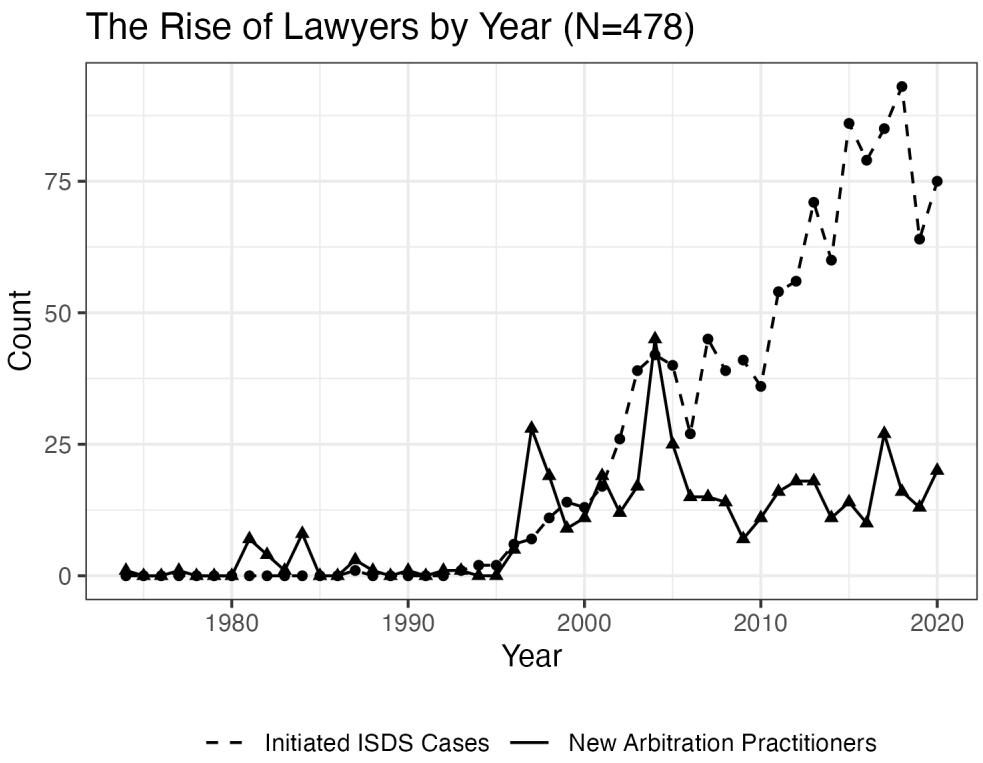


Figure 5: Entry of New Arbitration Practitioners, 1974-2022

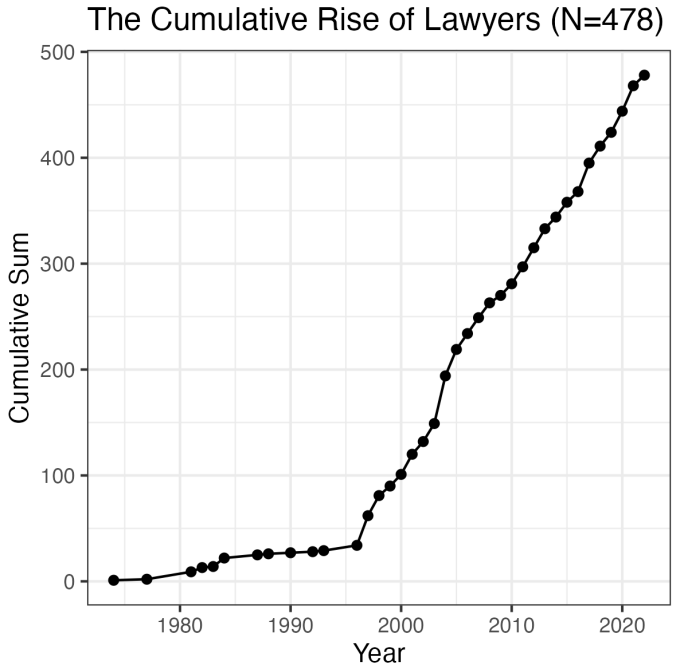


Figure 6: Cumulative Sum of Arbitration Practitioners, 1974-2022

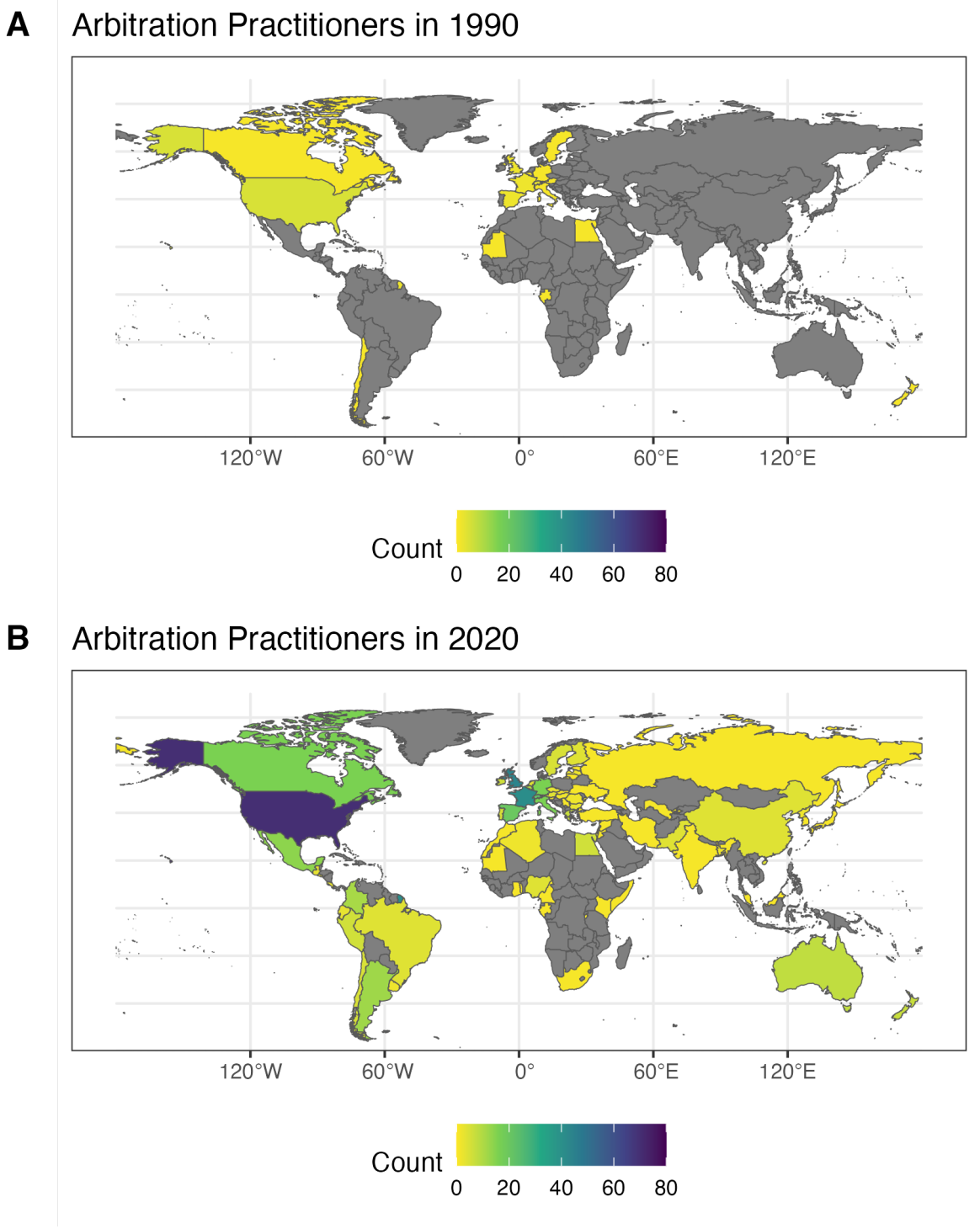
As their numbers increase, lawyers' nationalities have become more diverse in the last thirty years. Figure 7A represents the nationalities of the arbitration practitioners in 1990, and Figure 7B represents their nationalities in 2020. Both figures show a relative concentration of arbitration practitioners in North America and Europe as well as an increase in the absolute number of arbitration practitioners from all over the world. Figure 7A, illustrates that arbitration practitioners were from eighteen—mainly developed—countries in 1990. After thirty years, arbitration practitioners emerged from states that had never had arbitration practitioners.[29] In 2020, arbitration practitioners originated from 74 countries and represent their states as legal experts (Figure 7B).

While the above analyses suggest that ISDS cases lead to increased demand for lawyers at the global level, the analyses do not confirm whether ISDS cases increase demand of lawyers at the local level. To validate *The Rise of Lawyers* at the state level, we conduct a survival analysis to estimate how long a state, after being sued by investors in ISDS for the first time, can survive without a new arbitration practitioner from that state. We use the Kaplan-Meier survival function to estimate the survival rate (Kaplan and Meier, 1958). The survival rate is calculated as follows:

$$\hat{S}(y) = \prod_{y_i \leq y} \left(1 - \frac{d_i}{n_i}\right) \tag{1}$$

where n_i is the number of states previously exposed to ISDS, and d_i is the number of states that retained at least one new arbitration practitioner at year y_i. The estimator of the survival function is the probability that a state's survival without an arbitration practitioner from that state is longer than y. Based on the estimator, we plot the survival curve which allows us to identify how a state's survival probability without an arbitration practitioner evolves over time.

[29] While the map is helpful in understanding the geographical distribution of arbitration practitioners, it does not show the over-time variation of countries retaining new arbitration practitioners. Figure A.5 in the Appendix presents the entry of first-time arbitration practitioners by year and country.



Notes: When an arbitration practitioner has dual nationalities, we mark both nationalities on the map.

Figure 7: The Rise of Lawyers by Country

We expect that a state's first ISDS experience would lower the survival probability of a state gradually over time. We do not expect an immediate decline because it takes time for a legal expert from that state to declare expertise in investment arbitration and to take part in a future Tribunal using that expertise. In our dataset, among 175 states that signed a bilateral investment treaty, 132 states were previously sued by investors through ISDS at least once. After their first ISDS, new arbitration practitioners emerged from 49 states out of 132 states.

The gradually declining survival curve validates *The Rise of Lawyers* at the local level. Figure 8 shows that a state's first ISDS experience invites the subsequent rise of a new arbitration practitioner from that state. The zone colored in gray represents the 95% confidence interval. The survival analysis suggests that after five years, a new arbitration practitioner is likely to emerge from half of the states that were sued by investors for the first time. After ten years, the overall survival probability drops to 8.2%, indicating that a new arbitration practitioner is likely to emerge from 91.8% of states first hit by ISDS. Taking a conservative approach, we also restrict our analysis to states that did not have any arbitration practitioner before their first involvement in ISDS.[30] If the rise of lawyers is endogenous to the state-level experience of ISDS, we should observe a similar pattern in states that used to have low legal capacity before their first involvement in ISDS. Figure A.7 in the appendix continues to confirm that a state's experience of being sued by investors triggers the rise of a new arbitration practitioner from that state.

Arbitrators as Advisors

In the previous section, we showed that a state's experience in ISDS invites the rise of arbitration practitioners from the state. Consequently, we expect that the rise of legal

[30]The 132 states in Figure 8 include a state such as Switzerland that already had its own arbitration practitioners before its first ISDS. One might be concerned that states such as Switzerland, instead of states with low legal capacity, drive the rise of lawyers.

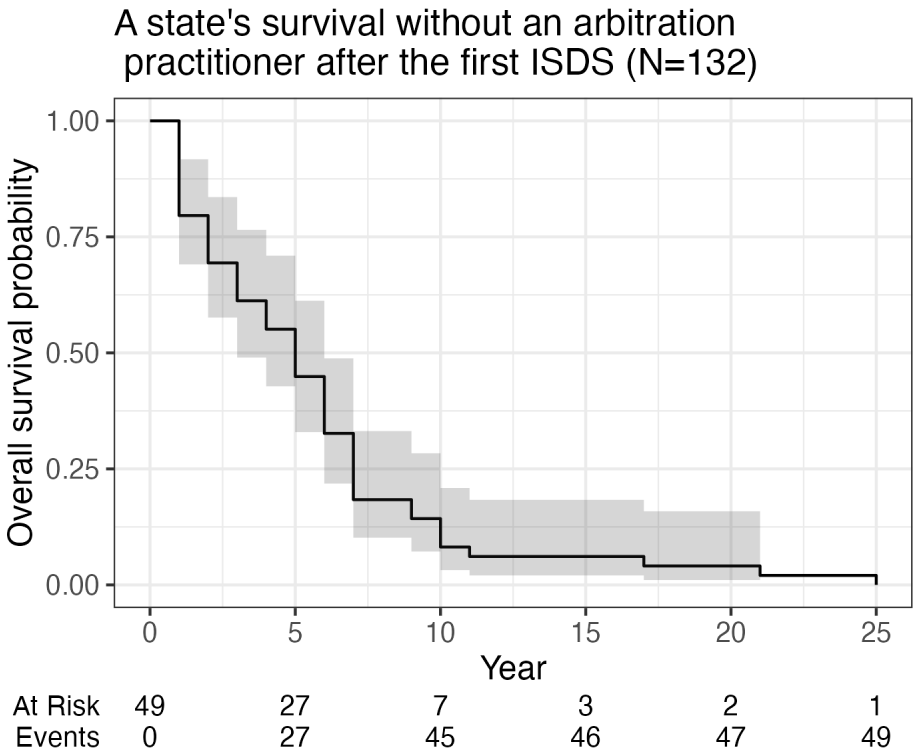


Figure 8: Survival analysis at the state level

experts shapes how investment treaties are renegotiated. More specifically, we expect that the rise of legal experts would lead states to adopt ISDS provisions that are more accessible to investors.

Our dependent variable is the changes in the accessibility of investors to ISDS and related procedures within the IIA renegotiation. ($\Delta Accessibility$). Accessibility captures whether the IIA enables investors to access ISDS and related procedures with greater ease. Positive $\Delta Accessibility$ means that in comparison to the text of the initial investment treaty, states adopted an increasingly accessible dispute settlement clause after renegotiation.

The independent variable is the sum of arbitration practitioners that negotiating parties used in the year of renegotiations ($Sum\ of\ Arbitrators$). We count the number of arbitration practitioners based on their first year of practice recorded on the ICSID website. For instance, Germany and Pakistan renegotiated their investment treaties in 2009. If two arbitration practitioners from Germany and one arbitration practitioner from Pakistan had adjudicated

an investment dispute before 2009, the *Sum of Arbitrators* in the case of Germany-Pakistan IIA is three.

We include a number of covariates (X'). To disentangle the learning-based explanation from the lawyer-based explanation, we control for the sum of ISDS cases in which two states were previously involved as respondents (*Sum of ISDS Involvement*), as well as the sum of ISDS cases states lost (*Sum of ISDS Losses*).[31] Here, ISDS losses are defined as cases where states had to pay damages to investors and were found liable by the arbitration. In our dataset, 46 out of 83 dyads of countries (55.4%) experienced at least one ISDS case before their renegotiations. According to the learning-based explanation, the repercussions from ISDS losses should lead states to lower investors' accessibility to dispute settlement provisions. If so, either the coefficient of *Sum of ISDS Involvement* or *Sum of ISDS Losses* should be negative and statistically significant.

We control for confounding factors at the international level that affect both the design of investment treaties and the number of investment lawyers. We consider IIAs renegotiated after 2005 (*Period*) in the context of the three distinct waves of Bilateral Investment Agreements delineated by different time periods (Jandhyala et al., 2011; Thompson et al., 2019). The covariate *Period* captures the third period, and takes into account the possibility of a dampening effect wherein countries began to more carefully analyze the costs associated with signing Bilateral Investment Agreements.[32] We also control for a treaty that was renegotiated under a Free Trade Agreement (*Chapter in FTA*), in light of the fact that FTAs involve a wider variety of issues that require negotiation, and may involve more than one state (Thompson et al., 2019, 870). We also control for a treaty that involves a signatory that joined the European Union in the 2000s (*New EU Member*) as countries newly joining the EU

[31]The correlation between *Sum of ISDS Involvement* and *Sum of ISDS Losses* is low. The Pearson correlation coefficient is 0.25 ($p < 0.05$).

[32]See Jandhyala et al. (2011) for more specific explanations on how the three periods 1970-1987, 1988-1999, and 2000-2007 have distinct design characteristics.

are sometimes subjected to revisions and terminations of IIAs in accordance with EU rules (Thompson et al., 2019), and a treaty that involves at least one member of the United Nations Security Council (*UNSC*) to control for possible coercion based on diplomacy. Δ *GDP Gap* is included to take into account changes in bargaining power between two parties which could affect the way states reform investment treaties (Huikuri, 2023).[33] Following Huikuri (2023), we calculate Δ *GDP Gap* as the difference between the parties' logged GDP compared to its value in the year of initial IIA signature. Δ *GDP Gap* can be formally represented as $[Log(GDP_{stronger,t_2}) - Log(GDP_{weaker,t_2})] - [Log(GDP_{stronger,t_1}) - Log(GDP_{weaker,t_1})]$ where t_1 denotes the year of initial IIA signature, and t_2 is the year of renegotiated IIA signature.

Additionally, we include domestic-level factors as covariates. We take domestic legal systems into account. We control for whether the renegotiation is between states that adopt common law and civil law by creating an ordinal variable that counts the number of parties within a dyad of states under common law jurisdiction (*Common law*). Common law and civil law exhibit significant differences in the ways evidence is presented, whether discovery is allowed, and the kinds of privileges awarded to an attorney and their client (Rubinstein, 2004). Political ideology at the time of renegotiation could also impact whether states negotiate or terminate investment treaties (Calvert, 2018). Therefore, we construct an ordinal variable of *Political Ideology* as a covariate, where 1 represents both states controlled by right-wing political parties, -1 represents those controlled by left-wing political parties, and 0 represents all other cases in the year of renegotiation. We retrieve the political ideology information from the Database of Political Institutions (Scartascini et al., 2021). We also test for the possibility of a dyad of capital-exporting countries agreeing to make ISDS more accessible for their investors with the variable *Logged Outward FDI Stock*, representing the logged value of the parties' combined outward FDI stock one year before their renegotia-

[33]We retrieve annual GDP data from the Maddison Project Database, which is available at https://www.rug.nl/ggdc/historicaldevelopment/maddison/. We use this database because it traces the annual GDP of countries back to the 1950s. Other GDP databases, such as the one provided by the World Bank, have missing information in earlier years.

tion.[34] Instead of using the parties' combined FDI stock in the year of renegotiation, we utilize data from one year before their renegotiation to avoid a posterior explanation. The model specification can be formally represented as follows where i denotes a dyad of states that signed and renegotiated an IIA.

Besides the confounding factors at the international and domestic levels, we control for neoliberal economic beliefs of arbitration practitioners using the information on their educational background. Educational background shapes the beliefs of bureaucrats (Chwieroth, 2013; Nelson, 2014, 2017), and these beliefs can affect how they interpret and include related IIA provisions during negotiations as an advisor. We trace the name of the law school from which an arbitration practitioner graduated, and generate a binary variable denoting whether the law school is based in the United States or not. As the regression is at the country-dyad level, we calculate the sum of arbitration practitioners trained at US-based law schools (*Sum of the US-trained*) in a given dyad.[35]

$$\Delta Accessibility_i = \beta_1 Sum\ of\ Arbitrators_i + \Gamma * X_i' + \epsilon_{i,} \tag{2}$$

We pay attention to the *changes* in ISDS accessibility before and after an IIA negotiation, and each observation requires accessibility information on both BITs before and after a renegotiation. Among the 140 dyads of BITs that states renegotiated as of June 2023, 56 dyads did not have information to code accessibility on the UNCTAD website. This leads to a total of 84 observations in the ISDS accessibility dataset. Excluding the Czechia-Turkey

[34]We acquire the outward FDI stock information from United Nations Conference on Trade and Development (UNCTAD) website (https://unctadstat.unctad.org/datacentre/dataviewer/US.FdiFlowsStock). The UNCTAD calculates FDI stock based on the value of the share of capital and reserves attributable to the parent enterprise, plus the net indebtedness of affiliates to the parent enterprises.

[35]US-based education will train lawyers based on common-law, while legal education in Germany or France for instance will be based on civil-law. The slight differences in how law is interpreted and understood may impact negotiation dynamics.

bilateral investment treaty (BIT) case,[36] the following results are based on the 83 dyads of countries.[37]

We find that a dyad of states with a larger sum of arbitration practitioners adopt accessible ISDS provisions after a renegotiation. Table 2 presents the result of the regression analysis. The dependent variable of of the three models in Table 2 is the changes in the standardized accessibility score, which varies from -1 to 1. Column 1 presents the result of the bivariate regression between the sum of arbitrators and the changes in accessibility. Column 2 is the regression result that controls for the confounding factors at the international level. Column 3 is the regression result that adds all the remaining covariates. The coefficient of *Sum of Arbitrators* in Column 3 is positive and statistically significant. Column 3 of Table 2 shows that having one more arbitration practitioner leads a dyad of states to adopt an ISDS provision that is more accessible to investors by 0.04 points.[38] The predicted plot in Appendix A.8 indicates that the predicted changes in accessibility become positive when a dyad of states retains two or more arbitration practitioners.

In contrast, previous exposure to ISDS, measured with the sum of ISDS cases as a respondent (*Sum of ISDS Involvement*) and the sum of ISDS losses (*Sum of ISDS Losses*) do not explain the degree to which a dyad of states modify ISDS provisions after a renegotiation. The pattern is consistent with Thompson et al. (2019)'s finding that even after investment disputes, states do not seem to pursue greater regulatory space in ISDS provisions. The previous learning-based explanation does not answer why states maintain procedural ISDS provisions that are investor-friendly, even after being sued by investors.

[36] Among the 84 dyads, Czechia-Turkey BIT is excluded from the analysis. The initial treaty prior to renegotiation involved a BIT that was created by Czechoslovakia. We exclude the Czechia-Turkey dyad as we view Czechoslovakia and Czechia as different states.

[37] Appendix Table A.1 provides the list of the 83 dyads of countries.

[38] Using the accessibility score that is not standardized, having one more arbitration practitioner increases the accessibility score by 0.85 points. The raw accessibility score ranges from -3 to 26. See Column 3 of Table A.3.

The result is robust to alternative model specifications. We construct an alternative independent variable based on the sum of cases arbitration practitioners were involved. The alternative independent variable better represents an arbitration practitioner with extensive experience. Using the sum of cases, we continue to see the positive and statistically significant association between arbitration practitioners and the changes in accessibility to ISDS (Column 3 of Table A.4). We also test the lawyers as advisors hypothesis using the Thompson et al. (2019)'s SRS ISDS measure as the dependent variable, a measure that is negatively correlated with the accessibility measure. The high SRS indicates states' high flexibility to freely legislate and implement domestic regulations in given public policy domains (Thompson et al., 2019, p.861). The greater state regulatory space in ISDS should thus constrain investors' access to ISDS. Consistent with our expectation, an additional arbitration practitioner in a dyad of states decreases the SRS ISDS score by 0.09 points (Column 3 of Table A.2).

The finding, combined with the rise of lawyers documented in the previous section, can explain why legal dispute resolution perpetuates in the investment regime. Figure 9 compares the effect of arbitration practitioners to other covariates that affect the design of investment treaties. Coefficients with a $p < 0.05$ are in solid black. Other than *Sum of Arbitrators*, the coefficients of *Period*, Δ *GDP gap*, and *Sum of the US-trained* are negative and statistically significant. These three coefficients suggest that a dyad of states tends to decrease investors' accessibility to ISDS when a dyad of states renegotiates an investment treaty after 2005, has experienced a greater gap in bargaining power, or has more arbitration practitioners trained in law schools based in the United States. The sum of arbitration practitioners can explain why states continue to rely on investment arbitration despite the multiple competing explanations that lead states to rely less on legal dispute resolution.

Table 2: Arbitrators as Advisors

	Dependent variable:		
		Δ Accessibility	
	Bivariate	+International	+Others
	(1)	(2)	(3)
Sum of Arbitrators	0.0003	0.01*	0.04***
	(0.01)	(0.01)	(0.01)
Chapter in FTA		−0.27**	−0.22*
		(0.13)	(0.13)
Period		−0.23***	−0.16**
		(0.07)	(0.08)
New EU Member		−0.07	−0.01
		(0.08)	(0.09)
UNSC		−0.02	−0.02
		(0.08)	(0.08)
Δ GDP Gap		−0.21***	−0.19***
		(0.06)	(0.06)
Sum of ISDS Involvement			−0.01
			(0.01)
Sum of ISDS Losses			−0.04
			(0.05)
Common Law			0.01
			(0.07)
Political Ideology, Right-wing			0.12
			(0.11)
Logged Outward FDI Stock			−0.001
			(0.02)
Sum of the US-trained			−0.10***
			(0.03)
Constant	0.26***	0.34***	0.33
	(0.05)	(0.05)	(0.25)
Observations	83	83	83
R^2	0.0000	0.36	0.47
Adjusted R^2	−0.01	0.31	0.37
Note:			*p<0.1; **p<0.05; ***p<0.01

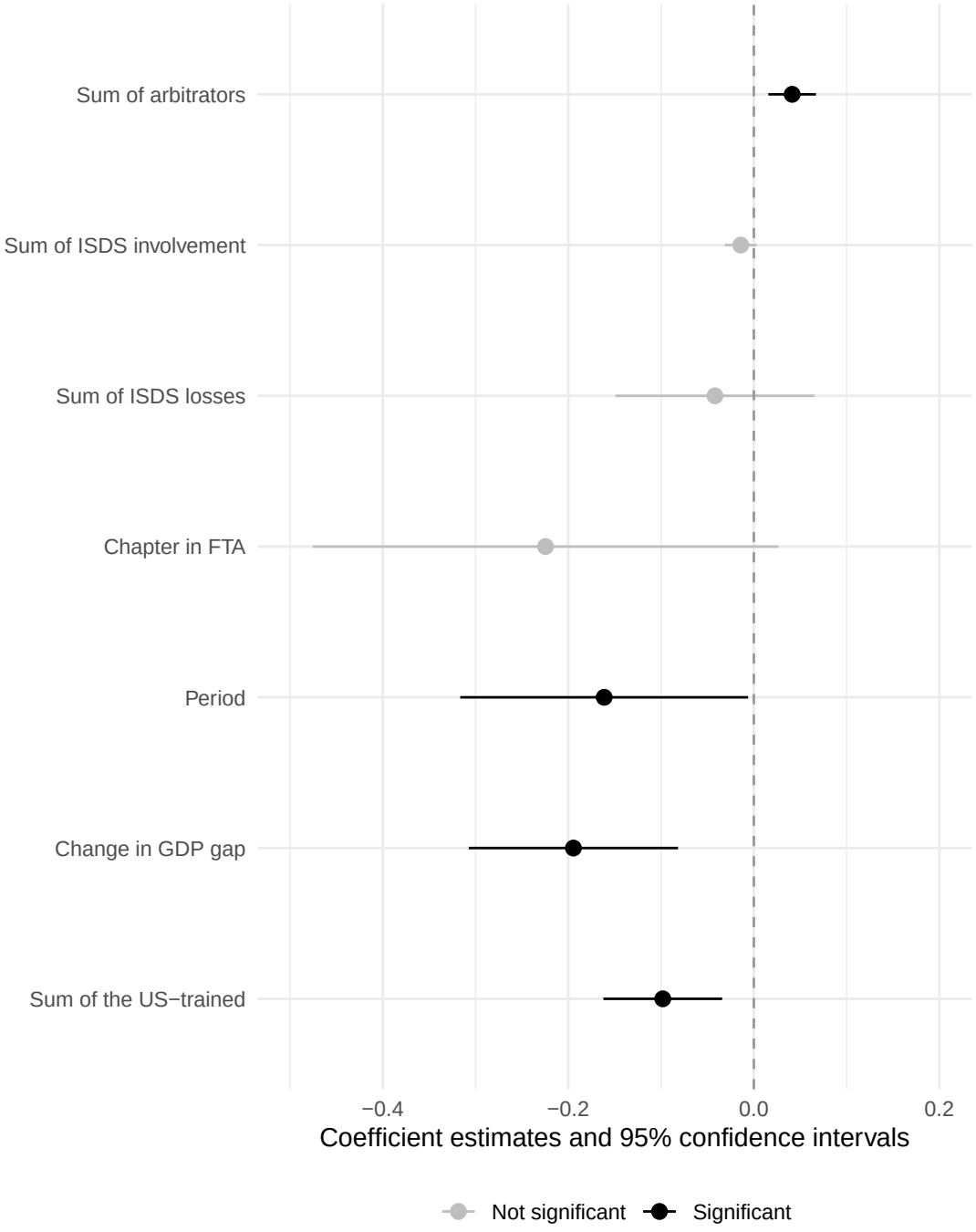


Figure 9: The Coefficient Plot

Discussion

In contrast to the prevailing notion that ISDS compromises state sovereignty, many states continue to make ISDS accessible to investors even after investors sue them. Some states

even modify their investment treaties in a way that further lowers the institutional hurdle of ISDS. We explain this puzzle by illuminating the rise of lawyers and its consequences. By attending to how lawyers exercise their authority in investment regimes, we can better understand why investment treaties continue to preserve accessible ISDS procedures despite countries' bitter experience from investment disputes.

We argue that lawyers as an actor in the investment regime can explain the persistence of legal dispute settlement procedures. By tracing the career and personal characteristics of individual arbitration practitioners who participated in ICSID investment disputes from 1974 to 2022, we validate the following two patterns. First, we show that a state's initial loss from ISDS generates the rise of arbitration practitioners from the state, both at the global and local levels. Second, we find that a dyad of states that retain a larger number of arbitration practitioners modify their investment treaties in a way that increases accessibility to ISDS. As a result, we observe the reliance on a specific form of cooperation: increased reliance on legal procedures as a way to resolve investment disputes.

Our findings indicate that lawyers not only settle investment disputes brought up by states and investors, but also can design treaties in favor of their beliefs or interests. Whereas past research examines the ways in which individual biases, efforts to build reputation, and the network structure of lawyers shape dispute settlement outcomes (Donaubauer et al., 2018; Langford et al., 2017; Puig, 2014; Rao, 2021; Waibel and Wu, 2012), we demonstrate that the impact of lawyers can extend to the design of treaties. By serving as arbitrators and advisors, lawyers can reinforce their authority as experts in the investment regime.

The diminishing role of diplomacy and local legal institutions in settling investment disputes, as evidenced by multiple studies (Poulsen and Aisbett, 2016; Polanco and Lazo, 2019; Allen, 2023), is by no means accidental. The results of our study indicate that the rise of lawyers can crowd out those alternative ways to settle investment disputes. Regarding why and how states renegotiate their investment treaties, existing studies offer state-centric explanations, ranging from the existence of domestic backlash (Thompson et al., 2019; Brutger

and Strezhnev, 2022), ramifications in investment (Lavopa et al., 2013), to bargaining dynamics between negotiating parties (Huikuri, 2023). Conversely, we elucidate how treaties are renegotiated by paying attention to experts who transcend the boundaries of domestic and international institutions.

We also contribute to the study of investment treaties by providing original datasets on arbitration practitioners and accessibility to ISDS. The arbitration practitioner dataset can be used to answer various questions about lawyers as actors, such as estimating their degree of agency in legal dispute resolution. For example, future research could measure individual lawyers' possible biases based on information about the types of clients the lawyers represented in the past. The accessibility dataset can be used to identify the extent to which states embrace transnational legal institutions. The accessibility dataset can be particularly useful to researchers studying the judicialization of international institutions (Alter et al., 2019; Weiler, 2001; Tate, 1995; Cohen, 2013).

More generally, our study explains how an international institution can perpetuate a specific form of international cooperation. States design these institutions to advance their interests, necessitating experts to operate and maintain them. Our findings indicate that when experts advocate for a specific form of international cooperation, their dominance can marginalize competing experts who are knowledgeable in alternative forms of cooperation. In situations where alternative perspectives are absent, states are compelled to seek advice from the initially appointed experts. This reliance on a select group of experts can transform and professionalize international cooperation, extending it beyond the original scope envisaged by states.

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Supplementary Information

March 13, 2024

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Pairs of Renegotiated IIAs

Dyad	Party1	Party2	Year
1_1	Bangladesh	Thailand	1988
1_2	Bangladesh	Thailand	2002
2_1	Turkey	Bangladesh	1987
2_2	Turkey	Bangladesh	2012
3_1	Belarus	Finland	1992
3_2	Belarus	Finland	2006
4_1	BLEU (Belgium-Luxembourg Economic Union)	China	1984
4_2	BLEU (Belgium-Luxembourg Economic Union)	China	2005
5_1	BLEU (Belgium-Luxembourg Economic Union)	Egypt	1977
5_2	BLEU (Belgium-Luxembourg Economic Union)	Egypt	1999
6_1	BLEU (Belgium-Luxembourg Economic Union)	Korea, Republic of	1974
6_2	BLEU (Belgium-Luxembourg Economic Union)	Korea, Republic of	2006
7_1	BLEU (Belgium-Luxembourg Economic Union)	Morocco	1965
7_2	BLEU (Belgium-Luxembourg Economic Union)	Morocco	1999
8_1	BLEU (Belgium-Luxembourg Economic Union)	Romania	1978
8_2	BLEU (Belgium-Luxembourg Economic Union)	Romania	1996
9_1	BLEU (Belgium-Luxembourg Economic Union)	Tunisia	1964
9_2	BLEU (Belgium-Luxembourg Economic Union)	Tunisia	1997
10_1	Bolivia	Spain	1990
10_2	Bolivia	Spain	2001
11_1	Bulgaria	Netherlands	1988
11_2	Bulgaria	Netherlands	1999
12_1	Canada	Czech Republic	1990
12_2	Canada	Czech Republic	2009
13_1	Canada	Latvia	1995
13_2	Canada	Latvia	2009
14_1	Canada	Romania	1996
14_2	Canada	Romania	2009
15_1	Canada	Slovakia	1990
15_2	Canada	Slovakia	2010
16_1	Chile	Uruguay	1995
16_2	Chile	Uruguay	2010
17_1	China	Czech Republic	1991
17_2	China	Czech Republic	2005
18_1	China	Finland	1984
18_2	China	Finland	2004
19_1	China	France	1984
19_2	China	France	2007
20_1	China	Korea, Republic of	1992
20_2	China	Korea, Republic of	2007

Dyad	Party1	Party2	Year
21_1	China	Korea, Republic of	2007
21_2	China	Korea, Republic of	2015
22_1	China	Netherlands	1985
22_2	China	Netherlands	2001
23_1	China	Portugal	1992
23_2	China	Portugal	2005
24_1	China	Spain	1992
24_2	China	Spain	2005
25_1	China	Switzerland	1986
25_2	China	Switzerland	2009
26_1	Colombia	Peru	1994
26_2	Colombia	Peru	2007
27_1	Colombia	Spain	1995
27_2	Colombia	Spain	2005
28_1	Colombia	United Kingdom	1994
28_2	Colombia	United Kingdom	2010
29_1	Costa Rica	Switzerland	1965
29_2	Costa Rica	Switzerland	2000
30_1	Portugal	Morocco	1988
30_2	Portugal	Morocco	2007
31_1	Ecuador	Germany	1965
31_2	Ecuador	Germany	1996
32_1	Egypt	Finland	1980
32_2	Egypt	Finland	2004
33_1	Egypt	Germany	1974
33_2	Egypt	Germany	2005
34_1	Egypt	Netherlands	1976
34_2	Egypt	Netherlands	1996
35_1	Egypt	Switzerland	1973
35_2	Egypt	Switzerland	2010
36_1	Ethiopia	Germany	1964
36_2	Ethiopia	Germany	2004
37_1	Finland	Indonesia	1996
37_2	Finland	Indonesia	2006
38_1	Finland	Kazakhstan	1992
38_2	Finland	Kazakhstan	2007
39_1	Finland	Poland	1990
39_2	Finland	Poland	1996
40_1	Finland	Viet Nam	1996
40_2	Finland	Viet Nam	2008
41_1	France	Morocco	1975
41_2	France	Morocco	1996

Dyad	Party1	Party2	Year
42_1	France	Philippines	1976
42_2	France	Philippines	1994
43_1	France	Romania	1976
43_2	France	Romania	1995
44_1	France	Tunisia	1963
44_2	France	Tunisia	1972
45_1	France	Tunisia	1972
45_2	France	Tunisia	1997
46_1	Gabon	Germany	1969
46_2	Gabon	Germany	1998
47_1	Germany	Guinea	1962
47_2	Germany	Guinea	2006
48_1	Germany	Indonesia	1968
48_2	Germany	Indonesia	2003
49_1	Germany	Jordan	1974
49_2	Germany	Jordan	2007
50_1	Germany	Madagascar	1962
50_2	Germany	Madagascar	2006
51_1	Germany	Morocco	1961
51_2	Germany	Morocco	2001
52_1	Germany	Oman	1979
52_2	Germany	Oman	2007
53_1	Germany	Romania	1979
53_2	Germany	Romania	1996
54_1	Germany	Sri Lanka	1963
54_2	Germany	Sri Lanka	2000
55_1	Germany	Yemen	1974
55_2	Germany	Yemen	2005
56_1	Indonesia	Netherlands	1968
56_2	Indonesia	Netherlands	1994
57_1	Japan	Mongolia	2001
57_2	Japan	Mongolia	2015
58_1	Jordan	Switzerland	1976
58_2	Jordan	Switzerland	2001
59_1	Korea, Republic of	Netherlands	1974
59_2	Korea, Republic of	Netherlands	2003
60_1	Korea, Republic of	Turkey	1991
60_2	Korea, Republic of	Turkey	2015
61_1	Korea, Republic of	Viet Nam	1993
61_2	Korea, Republic of	Viet Nam	2003
62_1	Korea, Republic of	Viet Nam	2003
62_2	Korea, Republic of	Viet Nam	2015

Dyad	Party1	Party2	Year
63_1	Kuwait	Turkey	1988
63_2	Kuwait	Turkey	2010
64_1	Malaysia	Romania	1982
64_2	Malaysia	Romania	1996
65_1	Mexico	Panama	2005
65_2	Mexico	Panama	2014
66_1	Morocco	United Arab Emirates	1982
66_2	Morocco	United Arab Emirates	1999
67_1	Morocco	Spain	1989
67_2	Morocco	Spain	1997
68_1	Netherlands	Uganda	1970
68_2	Netherlands	Uganda	2000
69_1	Romania	Turkey	1996
69_2	Romania	Turkey	2008
70_1	Romania	United Kingdom	1976
70_2	Romania	United Kingdom	1995
71_1	Slovakia	Turkey	2000
71_2	Slovakia	Turkey	2009
72_1	Switzerland	Syrian Arab Republic	1977
72_2	Switzerland	Syrian Arab Republic	2007
73_1	Switzerland	Tunisia	1961
73_2	Switzerland	Tunisia	2012
74_1	Switzerland	United Republic of Tanzania	1965
74_2	Switzerland	United Republic of Tanzania	2004
75_1	Brazil	Chile	1994
75_2	Brazil	Chile	2015
76_1	China	Australia	1988
76_2	China	Australia	2015
77_1	Germany	Iran, Islamic Republic of	1965
77_2	Germany	Iran, Islamic Republic of	2002
78_1	Colombia	Korea, Republic of	2010
78_2	Colombia	Korea, Republic of	2013
79_1	Turkey	Pakistan	1995
79_2	Turkey	Pakistan	2012
80_1	India	Malaysia	1995
80_2	India	Malaysia	2011
81_1	Korea, Republic of	India	1996
81_2	Korea, Republic of	India	2009
82_1	Netherlands	Oman	1987
82_2	Netherlands	Oman	2009
83_1	BLEU (Belgium-Luxembourg Economic Union)	Rwanda	1983
83_2	BLEU (Belgium-Luxembourg Economic Union)	Rwanda	2007

The Dataset on Arbitration Practitioners

We have collected the individual characteristics of ICSID Panel Members from the ICSID website (Link). We have acquired the information of 478 arbitration practitioners from the ICSID website (Figure A.1). The website releases the CVs of each arbitration practitioner. We extract the individual-level information from the CVs with the help of research assistants. Figure A.2 presents an example of the CVs. The following variables have been collected:

1. The ICSID case symbol
2. Name of the case
3. Name of the arbitration practitioner
4. Nationality of the arbitration practitioner
5. Gender of the arbitration practitioner
6. Name of the law school(s) graduated
7. Whether the arbitration practitioner is trained in the US (1=yes)
8. Whether the arbitration practitioner is trained in Europe (1=yes)
9. Role in the case (Arbitrator, President or Chairman, Counsel Lawyer)
10. Date of tribunal constitution
11. Date of conclusion
12. Country that appointed the arbitration practitioner in the case
13. Claimant (investors) that appointed the arbitration practitioner in the case
14. Name of affiliated lawfirm(s)

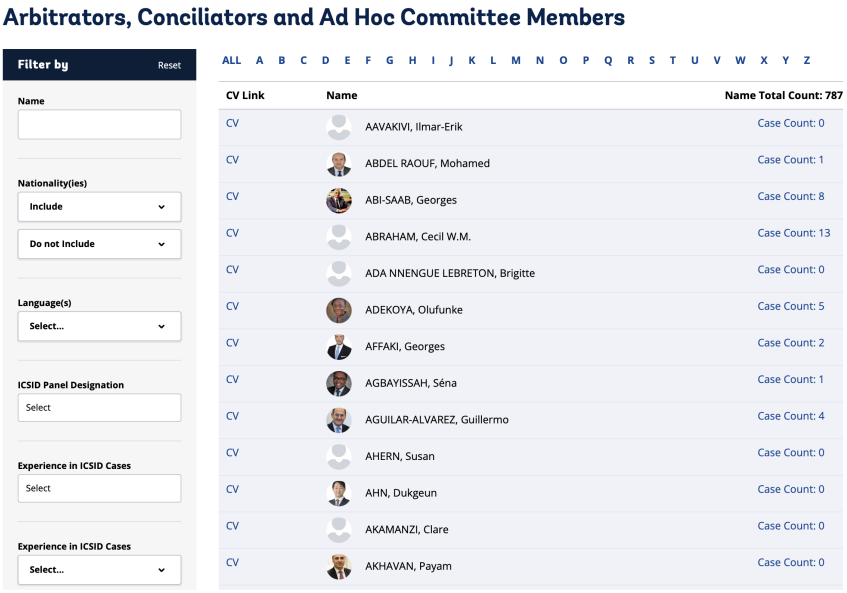

Figure A.1: The List of the ICSID Panel Members

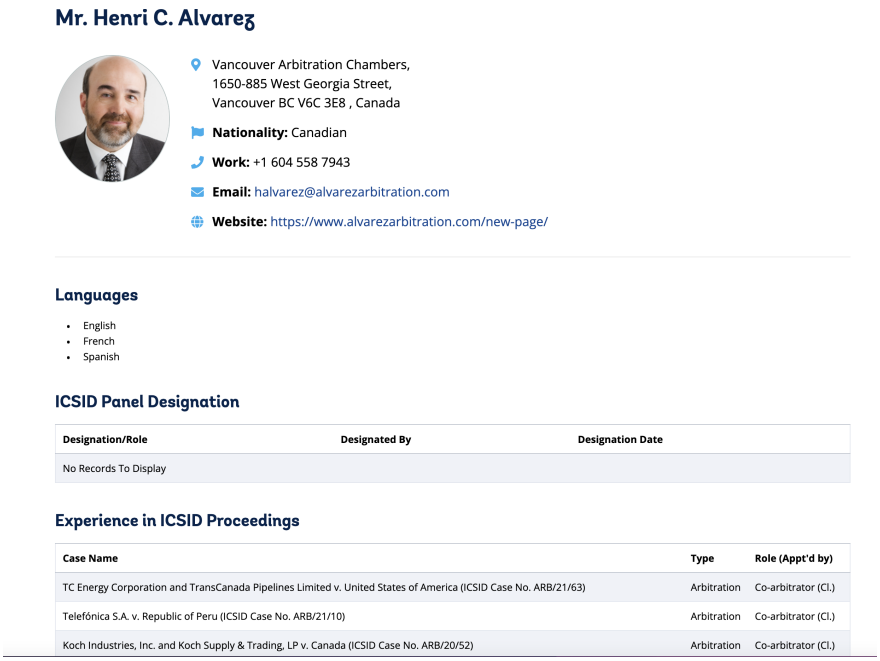

Figure A.2: The Example of the CV

Accessibility Coding

To create a score of accessibility to ISDS for each international investment agreement, we have collected the following information. This section introduces specific definitions based on which UNCTAD has mapped these treaties. The list of the following questions are what UNCTAD has mapped. From many other elements UNCTAD has mapped, we have chosen the following from the UNCTAD scoring as criteria for accessibility. The following has been weighted in its importance for the coding of accessibility, where we have coded accessibility scores based on our coding schema below.

1. Is ISDS included in the IIA?
2. Are there alternative forms of negotiation available?
3. Are only specific provisions applicable to ISDS?
4. Are there an exclusion of policy areas from ISDS?
5. Are issues of taxation or prudential measures excluded?
6. Is express consent required to enter arbitation?
7. Are there limitations to how many different forums investors could seek for one case?
8. Are there limitations on which venues arbitration could take place?
9. Is there a limit on the period for submission of claims?
10. Does the IIA require consolidation of claims?
11. How long is the duration of the treaty?
12. Is unilateral termination possible?
13. Are there survival clauses within the IIA?

We construct the dependent variable Δ *Accessibility* based on the accessibility score of each investment treaty. The accessibility measure is composed of the answers to all the elements above, which allow investors to gain access to arbitration and related remedies. The raw accessibility score ranges from -3 to 26. For intuitive interpretation, we standardize the measure so that it ranges from 0 to 1. Figure A.3 presents the distribution of the raw accessibility score (top) and the standardized accessibility score (bottom). In Figure A.4a, A.4b, A.4c, and A.4d, we lay out how we code accessibility scores in detail.

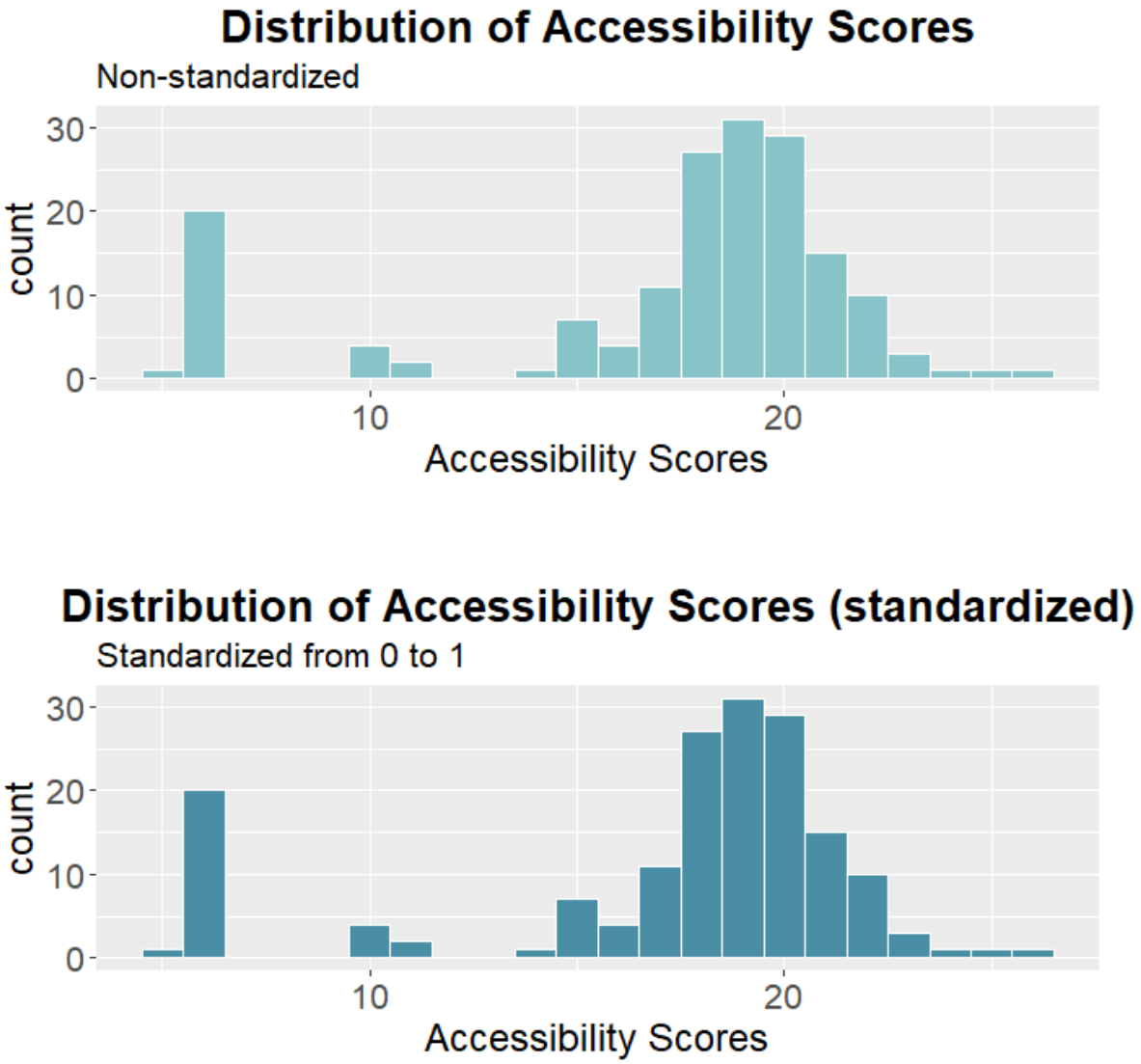

Figure A.3: Distribution of Accessibility Scores

Figure A.4a: Accessibility Coding

Elements	Coding By UNCTAD (Direct Citation from the Codebook of UNCTAD IIA mapping)	Our Scoring Based on UNCTAD's coding
ISDS included	"Marked "Yes" if the treaty establishes a mechanism for the settlement of disputes between covered investors and the host State (arbitration and/or domestic courts of the host State)"	Yes = 10 No = 0
Alternatives	"Marked "Voluntary ADR (conciliation / mediation)" if the treaty mentions the possibility of such procedures (e.g. "non-binding, third-party procedures") but does not prescribe them as a necessary step. Marked "Compulsory ADR (conciliation / mediation)" if the treaty prescribes the use of conciliation or mediation (can be referred to as "non-binding third-party procedures", or ADR methods) as a mandatory procedure, i.e. that must be resorted to before adjudicatory proceedings (arbitration) can be commenced. Marked "None" if the treaty does not refer to alternative means of settling investor-State disputes (conciliation / mediation or similar non-binding procedures).	Voluntary ADR (Conciliation / mediation) = 1 Compulsory ADR (Conciliation / mediation) = 0.5 None = 0
Type of consent to arbitration	Marked "Provides express or implied consent" if the contracting parties give their prior consent to ISDS (arbitration) for investors' claims arising under the treaty. Such consent can be (i) express (e.g. "Each Party hereby gives its unconditional consent…", or (ii) implied (i.e. the text of the treaty is silent on the matter of consent but suggests that an investor does not need to obtain a separate consent to arbitration from the respondent State in order to initiate ISDS proceedings against it). Marked "Requires case-by-case consent" if the contracting parties do not provide their prior consent to ISDS (arbitration) for investors' claims arising under the treaty. A treaty may contain, for example, an explicit reservation of consent, or provide that the Parties shall give their consent in the future.	Provides express or implied consent = 1 Requires case-by-case consent = 0.5 Inconclusive = 0

Note: The second column is a direct citation from the UNCTAD IIA mapping project, where they describe how the BITs have been analyzed based on its design element.

Figure A.4b: Accessibility Coding (continued)

Venue_choice (Please note this is a cumulative score, where we add all the available courts that the IIA has allowed investors to use, and then subtract, if certain limitations are applied to how they shall proceed with the courts.	Marked "No reference" if the treaty, which lists more than one ISDS forum, does not contain rules on the relationship between various ISDS forums, i.e. on whether the same dispute can be submitted to several forums, either simultaneously or subsequently. Marked "Fork in the road" if the treaty contains a "fork-in-the-road" clause, i.e. a provision which requires the investor to choose between the domestic courts and international arbitration at the outset. Once an investor starts the domestic proceedings, it loses the right to resort to arbitration, and vice versa. This category captures any "finality of choice" provision including the selection between two arbitral forums. "No U turn" (waiver clause) Marked "No U turn (waiver clause)" if the treaty contains a "no-U-turn" clause, which provides that once the investor has opted for international arbitration, it cannot shift back to domestic courts. It often requires a "waiver" from domestic litigation as a condition of submitting the dispute to arbitration. Preserving right to arbitration after domestic court proceedings Marked "Preserving right to arbitration after domestic court proceedings" if the treaty explicitly preserves the right of investors to submit a dispute to arbitration after they have initiated local court proceedings, but before these courts have rendered a judgment. P Local remedies first Marked "Local remedies first" if a treaty obliges an investor to go through (but not necessarily exhaust) local remedy procedures in the host State, be they of administrative or judicial kind, before submitting a claim to arbitration.	Domestic Courts of the Host State =1 ICSID = 1 Other forums = 1 Other or Inconclusive = 0 Local remedies first = -3 Preserving right to arbitration after domestic court proceedings = -3 Fork in the Road = -1 No U turn (waiver clause) = -1 No reference = 0
Limitation period for submission of claims	Marked "Yes" if the treaty prohibits submission to ISDS of the claims that are outside of the limitation period (often 3 or 5 years from the date on which the claimant first acquired, or should have first acquired, knowledge of the treaty breach and damage)	No = 1 Yes = 0
Consolidation of claims	Marked "Yes" if the treaty contains a provision regarding consolidation of claims arising out of the same events or circumstances.	No = 1 Yes = 0
Duration	This section records the initial treaty term, i.e. the length of time during which an agreement shall remain in force. The initial treaty term can be fixed (equal to a certain	Indefinite = 1 20 years = 0.75 15 years = 0.5 10 years = 0.25

Figure A.4c: Accessibility Coding (continued)

	number of years) or indefinite and is marked accordingly in this section.	
Unilateral	Marked "Yes" if the treaty expressly provides that it can be unilaterally terminated by a contracting party, and sets out the procedure for such unilateral termination. This section records the length of the notice period necessary for a Contracting State to unilaterally denounce the treaty, if the treaty provides for such unilateral termination.	No = 1 Yes = 1
Survival	A "survival"/"sunset" clause guarantees that in case of unilateral termination of the treaty, the treaty will remain in effect for a certain number of years following the termination with respect to investments made prior to the termination. This section records such extra treaty duration specified in the "survival" clause. If the treaty does not include a "survival" clause, this is marked "None"	20 years = 1 15 years = 0.75 10 years = 0.5 Inconclusive or none = 0
Scope of Claims	Marked "Covers any dispute relating to investment" if the treaty allows to submit to ISDS "any dispute arising from / connected to / relating to / concerning an investment" or uses similar broad formulations. Marked "Lists specific bases of claim beyond treaty (e.g. contractual disputes)" if the treaty allows to submit to ISDS certain identified types of claim, which go beyond the alleged breaches of the treaty itself but are not as broad as "any dispute". For example, a treaty may claims arising out of the alleged breach of: (i) treaty obligations, (ii) an investment authorization, or (iii) an investment contract. Marked "Covers treaty claims only" if the treaty allows to submit to ISDS only claims alleging a breach of the treaty by the respondent State. Treaties that refer to disputes "concerning interpretation and application of this agreement" also fall into this category. Marked "Other" if the treaty's ISDS clause doesn't fall into any of the above categories.	Covers any dispute relating to investment = 1 Lists specific bases of claim beyond treaty (e.g. contractual disputes) = 0.75 Covers treaty claims only = 0.5 Other = 0
Limitation of provisions subject to ISDS	Marked "Yes" if the treaty provides that not all of its provisions are subject to ISDS. A treaty can do that either (i) by positively identifying those provisions, whose alleged violations can be submitted to ISDS (leaving some substantive provisions out), or (ii) by expressly excluding certain provisions from the scope of ISDS.	No = 1 Yes = 0
Exclusion of policy areas from ISDS	Marked "Yes" if the treaty excludes a particular policy area(s) or certain economic industries/sectors from the ISDS scope. Excluded policy areas and sectors may include, for example, host State's decisions concerning admission	No = 1 Yes = 0

Figure A.4d: Accessibility Coding (continued)

	of foreign investments, claims relating investments in real estate, financial institutions, etc	
Special mechanisms for taxation or prudential measures	Marked "Yes" if the treaty requires the disputing parties, or the tribunal, to refer certain matters (e.g. those concerning taxation, prudential measures, scheduled reservations) for joint determination by the contracting parties or their joint commission.	No = 1 Yes = 0

Note: The second column is a direct citation from the UNCTAD IIA mapping project, where they describe how the BITs have been analyzed based on its design element.

The Rise of Lawyers Heatmap

Figure A.5: The Rise of Lawyers by Country and Time

Summary Statistics

Table A.1: Summary Statistics

Statistic	N	St. Dev.	Mean	Min	Max
Δ Standardized Accessibility	83	0.32	0.26	−0.66	0.92
Sum of ISDS Involvement	83	4.73	2.89	0	21
Sum of ISDS Losses	83	0.59	0.19	0	3
Period	83	0.50	0.57	0	1
Chapter in FTA	83	0.24	0.06	0	1
New EU Member	83	0.37	0.16	0	1
UNSC	83	0.41	0.22	0	1
Common Law	83	0.50	0.27	0	2
Sum of Arbitrators	83	5.68	4.59	0	32
Sum of Arbitrator Cases	83	32.91	19.80	0	162
Sum of the US-trained	83	2.10	1.23	0	11
Sum of Cases by the US-trained	83	8.29	4.13	0	43
Party Ideology, Right-wing	83	0.29	−0.04	−1	1
Logged Outward FDI Stock	83	1.57	12.13	6.57	14.32
Δ GDP Gap	83	0.58	−0.15	−1.95	0.94

Relationship between SRS and Accessibility

Thompson et al. (2019) defines state regulatory space (SRS) as 'the ability to freely legislate and implement regulations in a given public policy domain.'[1] The similarity between the SRS and accessibility score is that they both measure to which extent an investment treaty provides space for states to implement policy, and to which extent investors have the right to bring these states to arbitration. While the SRS approaches this issue from the policy space of states, the accessibility score looks at a similar aspect from the point of view of investors.

The accessibility score differs from the concept of SRS in two distinct ways. The main difference is the stage of the legal recourse the scores focus on. SRS largely incorporates both procedural (as SRS ISDS) and substantive (as SRS substantive) aspects that integrate both the process by which ISDS procedures can be started, and the negotiation during which claims are determined based on whether a specific substantive action or policy would be considered a breach of IIA. However, accessibility scores focus purely on procedural aspects that allow investors to have easier access to ISDS procedures, and more broadly the IIA.

Second, while SRS includes institutional features of ISDS, we also look more broadly at the provisions that expand the right of investors through the continuation of the IIA itself. While Thompson et al. (2019) has categorized some of these elements as substantive SRS, we believe the actual substantive negotiations that determine the rights of the investor during arbitration procedures should be distinguished from how long and to what extent the IIAs continue to enable investors to seek their rights when violated. We visualize how the concept of accessibility differs from SRS in Figure A.6. As such, accessibility encompasses articles within the IIA that deal with procedural aspects allowing investor access to ISDS and related procedures.

For instance, the following elements considered as substantive SRS are included as a part of accessibility: (1) Are pre-existing disputes covered, (2) treaty duration, (3) automatic renewal, (4) modalities for denunciation, (5) survival clause length, (6) limiting the temporal scope of IIA. Furthermore, elements from the procedural ISDS are excluded from the accessibility concept such as: (1) interpretation focusing on whether the outcome is binding, and (2) transparency in arbitral proceedings, whether outcomes become publicly available. This is because the accessibility as a concept focuses on the step to which investors may bring states into arbitration, and as such findings and transparency of proceedings are less relevant. A visualized difference between SRS and accessibility score is included in A.6.

We calculate a Pearson correlation coefficient to ensure transparency about the extent of similarity between SRS ISDS and the accessibility score. We match the dataset from our accessibility score to Thompson et al. (2019)'s dataset and find an overlap of 71 observations.[2]

[1] SRS includes aspects such as scope and definition, non-discrimination and other standards of treatment, expropriation and other substantive obligations, good governance, flexibility, institutional issues and final provisions, and procedural provisions as a whole.

[2] Twelve cases from our dataset ($N = 83$) do not match Thompson et al. (2019)'s dataset due to inconsistencies in time periods. Thompson et al. (2019) examine a pair of investment treaties negotiated and renegotiated from 1959 to 2007, while we examine a pair of investment treaties negotiated and renegotiated from 1961 to 2010. Moreover, our dataset relies on cases that have been mapped in the UNCTAD IIA dataset, whereas Thompson et al. (2019) additionally include cases that have not been mapped by UNC-

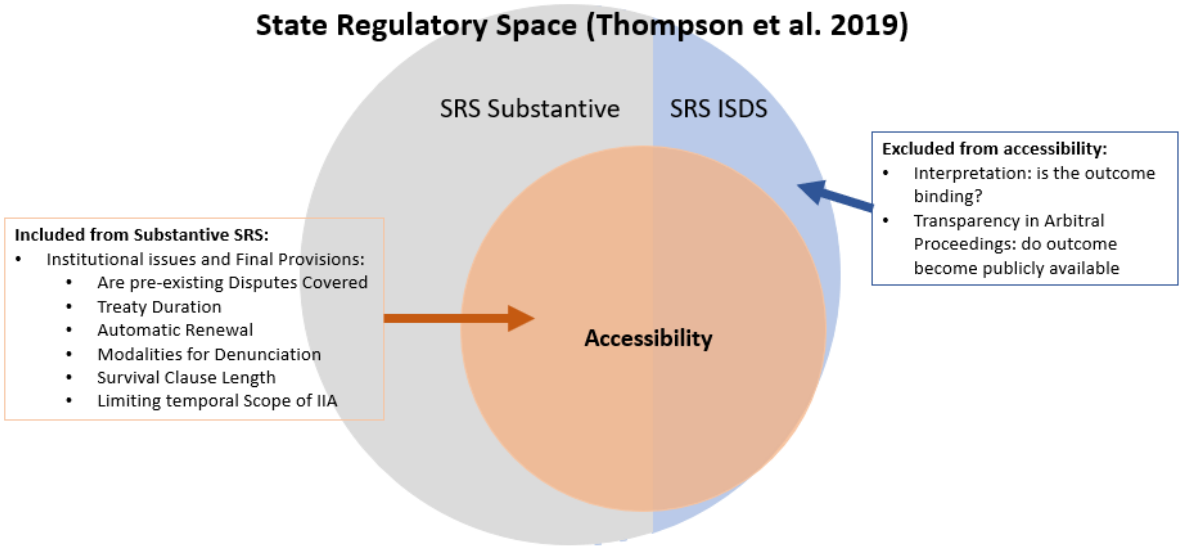

Figure A.6: Relationship between SRS and Accessibility to ISDS

Note: SRS ISDS is further explained in Thompson et al. (2019), Appendix page 8.

There is a negative correlation (-0.673, $p < 0.0001$) between the SRS ISDS measure and our scoring of accessibility. The negative correlation is intuitive as greater state regulatory space in ISDS provisions would constrain investors from using ISDS based on their needs.

As the SRS ISDS measure and accessibility measure are negatively correlated, we test the arbitrators as advisors hypothesis using the SRS ISDS measure. If lawyers advise states to lower an institutional hurdle for legal dispute resolution, we should observe the decreased state regulatory space in ISDS-related provisions. We thus expect the coefficients of *Sum of Arbitrators* and *Sum of Arbitrator Cases* to be negative and statistically significant. Table A.2 supports the expectation.

TAD. Lastly, we focus our analyses on renegotiated investment treaties, whereas Thompson et al. (2019)'s analyses additionally include terminated investment treaties that were not renegotiated.

Table A.2: Arbitrators as Advisors Tested with the SRS Measure

	Dependent variable:		
	Δ SRS ISDS (Thompson et al., 2019)		
	Bivariate	+International	+Others
	(1)	(2)	(3)
Sum of Arbitrators	−0.01	−0.03***	−0.09***
	(0.01)	(0.01)	(0.02)
Chapter in FTA		0.29	−0.01
		(0.24)	(0.24)
Period		0.38***	0.25**
		(0.10)	(0.11)
New EU Member		0.32**	0.17
		(0.13)	(0.13)
UNSC		0.10	0.14
		(0.12)	(0.13)
Δ GDP Gap		0.26***	0.25***
		(0.09)	(0.08)
Sum of ISDS Involvement			0.03**
			(0.01)
Sum of ISDS Losses			0.04
			(0.07)
Common Law			−0.06
			(0.11)
Political Ideology, Right-wing			−0.08
			(0.15)
Logged Outward FDI Stock			0.01
			(0.04)
Sum of the US-trained			0.18***
			(0.06)
Constant	−0.23***	−0.43***	−0.56
	(0.08)	(0.09)	(0.51)
Observations	71	71	71
R^2	0.02	0.42	0.57
Adjusted R^2	0.01	0.36	0.48
Note:			*p<0.1; **p<0.05; ***p<0.01

The Survival Analysis

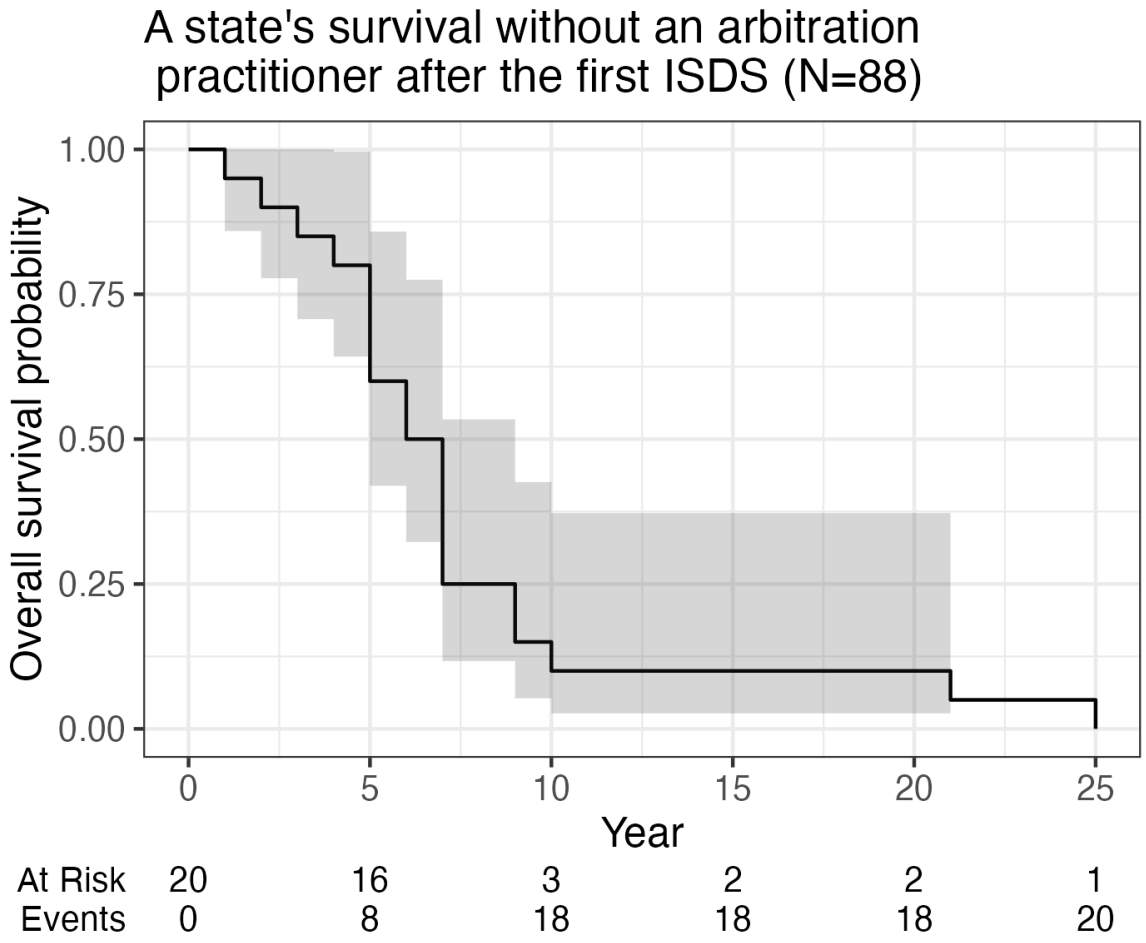

Figure A.7: Survival analysis at the state level (conservative)

List of Lawyers and Law Firms Serving Dual Roles

The following is the list of lawyers and law firms that served dual roles in international and domestic institutions within the international investment regime. We record their roles in international institutions in the column named 'Experience as Arbitration Practitioner,' and their roles in domestic institutions in the column named 'Experience as Advisor.' We collect the information from the curriculum vitae of the lawyers and law firms uploaded on their professional websites.

Name	Lawfirm	Experience as Arbitration Practitioner	Experience as Advisor
Lauren Mandell	Wilmerhale	US delegate to UNCITRAL and ICSID	US lead negotiator of the investment chapter of the US-Mexico-Canada Agreement (USMCA)
Byung-Woo Im	Kim Chang	Served on several arbitration cases	"Regularly advises clients in drafting arbitration agreements and in handling enforcement matters."
Michele Potestà	Levy Kaufmann-Kohler	"Participated in over 50 international investment and commercial arbitrations under all major arbitral rules (including ICC, ICSID, UNCITRAL, Swiss Arbitration Center, CAM, SIAC, DIAC, Danish Institute of Arbiration and CAS)"	"Michele has advised sovereign states on their investment treaty programs and currently acts as expert advisor to the Swiss Government in the inter-State negotiations on the reform of investor-state dispute settlement ("ISDS") in UNCITRAL's Working Group III."
Catherine Armifar	Debevoise Plimtpon	ICSID	Counselor on International Law to the Legal Adviser at U.S. Department of State Advised State Department on litigation matters involving international law and foreign relations. Represented the US before international bodies and advised the State department on international legal issues.

Lee Caplan	ArentFox Schiff	Practiced investor-state arbitration and ligitation in support of arbitration	US delegate to United Nations Commission on International Trade Law (UNCITRAL) "[...] Lee was integrally involved in efforts to encourage and protect foreing investment by US businesses, serving as the Department's principal lawyer in negotiations to conclude investment treaties with China and the Czech Republic and the investment chapter of a free trade agreement with the Trans-Pacific Partnership countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. In addition, he made critical contributions to the Obama Administration's review of the US Model Bilateral Investment treaty, providing counsel on proposals to revise the template on which US investment treaty negotiations are based."
Marney Cheek	Covington	Involved in leading "complex investment treaty and international commercial disputes under the rules of major arbitral institutions."	Associate General Counsel at the Office of the U.S. Trade Representative On the roster of Arbitrators for several U.S. FTAs.

Donald F. Donovan	Debevoise Plimtpon	ICJ ICSID PCA ICC ICDR	Member of U.S. Department of State's Advisory Comittee on International Law Memberof the Advisory Committee of the American Law Institute for the Restatement (Fourth) of Foreign Relations Law of the US Restatement of the U.S. Law of International Commercial and Investor-State Arbitration
Andrea Menaker	White Case	"Represented respondent States and claimant investors in equal measure in some most groundbreaking investment arbitration cases."	Chief of NAFTA Arbitration Division for the US State Department Lead Counsel for the US investor-state arbitration under the investment chapter of NAFTA Participated in the drafting of investment and dispute resolution provisions in US bilateral investment treaties.
Gabrielle Kaufman-Kohler	Levy Kaufmann-Kohler	ICC ICSID AAA LCIA SIAC CIETAC	Swiss delegate to UNCITRAL (working group II on transparency, working group III on reform of investor-state arbitration)

Yves Fortier	NA	ICC LCIA HKIAC SIAC CIETAC ICSID CAS SDRCC	The Government of Canada, as counsel before the International Court of Justice at the Hague in the Canada-US Gulf of Maine Maritime Boundary Case (1984) The Government of Canada, as its Chief Negotiator in the negotiation with France of a Maritime Boundary in the North Atlantic (1987-1989) The Government of Canada as its Chief Negotiator in the negotiation with the United States of the Pacific Salmon Treaty (1994-1998) Canada's Ambassador and Permanent Representative to the UN New York Canada's Representative on the Security Council of the UN World Bank's Sanctions Board Security and Intelligence Review Committee of Canada and Privy Council of Canada.
Unspecified	Cooley	"Represented many countries and investors as counsel to arbitration"	[represented] "Canada as counsel in the negotiation agreements and in handling enforcement matters."

Unspecified	Bennett Jones	"undertaking investment treaty arbitrations under various arbitration mechanisms, including those administered by ICSID, Permanent Court of Arbitration (PCA), and under the UNCITRAL Arbitration Rules	Our deep expertise in investment law and treaty interpretation, as well as our hands-on experience negotiating investment treaties on behalf of sovereign states, gives us a leading edge in supporting clients on investment matters." "In recognition of our leadership in the area of investment treaty arbitration, recently our team was appointed to the UK Government's new Trade Law Panel together with Linklaters LLP, following an open and competitive international procurement process involving many of the world's leading law firms. The Trade Law Panel was established to assist the UK government in international trade disputes at the WTO and in connection with disputes brought under the UK's trade and investment treaties.

**Note: References to these quotes are available in the hyperlinks embedded in the names.

Table A.3: Arbitrators as Advisors Tested with Raw Accessibility

	Dependent variable:		
		Δ Accessibility	
	Bivariate	+International	+Others
	(1)	(2)	(3)
Sum of Arbitrators	0.01	0.22*	0.85***
	(0.13)	(0.12)	(0.26)
Chapter in FTA		−4.85*	−3.82
		(2.56)	(2.51)
Period		−4.90***	−3.52**
		(1.36)	(1.55)
New EU Member		−1.48	−0.40
		(1.67)	(1.76)
UNSC		−0.45	−0.46
		(1.56)	(1.62)
Δ GDP Gap		−4.40***	−3.99***
		(1.13)	(1.13)
Sum of ISDS Involvement			−0.28
			(0.17)
Sum of ISDS Losses			−0.91
			(1.07)
Common Law			0.09
			(1.30)
Political Ideology, Right-wing			2.38
			(2.11)
Logged Outward FDI Stock			−0.05
			(0.44)
Sum of the US-trained			−1.96***
			(0.64)
Constant	3.41***	5.20***	5.36
	(0.93)	(1.08)	(5.08)
Observations	83	83	83
R^2	0.0002	0.37	0.47
Adjusted R^2	−0.01	0.32	0.38
Note:			*p<0.1; **p<0.05; ***p<0.01

Table A.4: Arbitrators as Advisors Tested with Sum of Arbitrator Cases

	Dependent variable:		
		Δ Accessibility	
	Bivariate	+International	+Others
	(1)	(2)	(3)
Sum of Arbitrator Cases	−0.001	0.001	0.003*
	(0.001)	(0.001)	(0.002)
Chapter in FTA		−0.29**	−0.34**
		(0.13)	(0.13)
Period		−0.21***	−0.15*
		(0.07)	(0.08)
New EU Member		−0.09	−0.01
		(0.09)	(0.09)
UNSC		−0.01	−0.01
		(0.08)	(0.09)
Δ GDP Gap		−0.22***	−0.20***
		(0.06)	(0.06)
Sum of ISDS Involvement			−0.01
			(0.01)
Sum of ISDS Losses			−0.01
			(0.06)
Common Law			0.02
			(0.07)
Political Ideology, Right-wing			0.11
			(0.11)
Logged Outward FDI Stock			0.02
			(0.02)
Sum of Cases by the US-trained			−0.01
			(0.01)
Constant	0.28***	0.36***	0.10
	(0.04)	(0.05)	(0.27)
Observations	83	83	83
R^2	0.01	0.35	0.41
Adjusted R^2	−0.01	0.30	0.31
Note:		*p<0.1; **p<0.05; ***p<0.01	

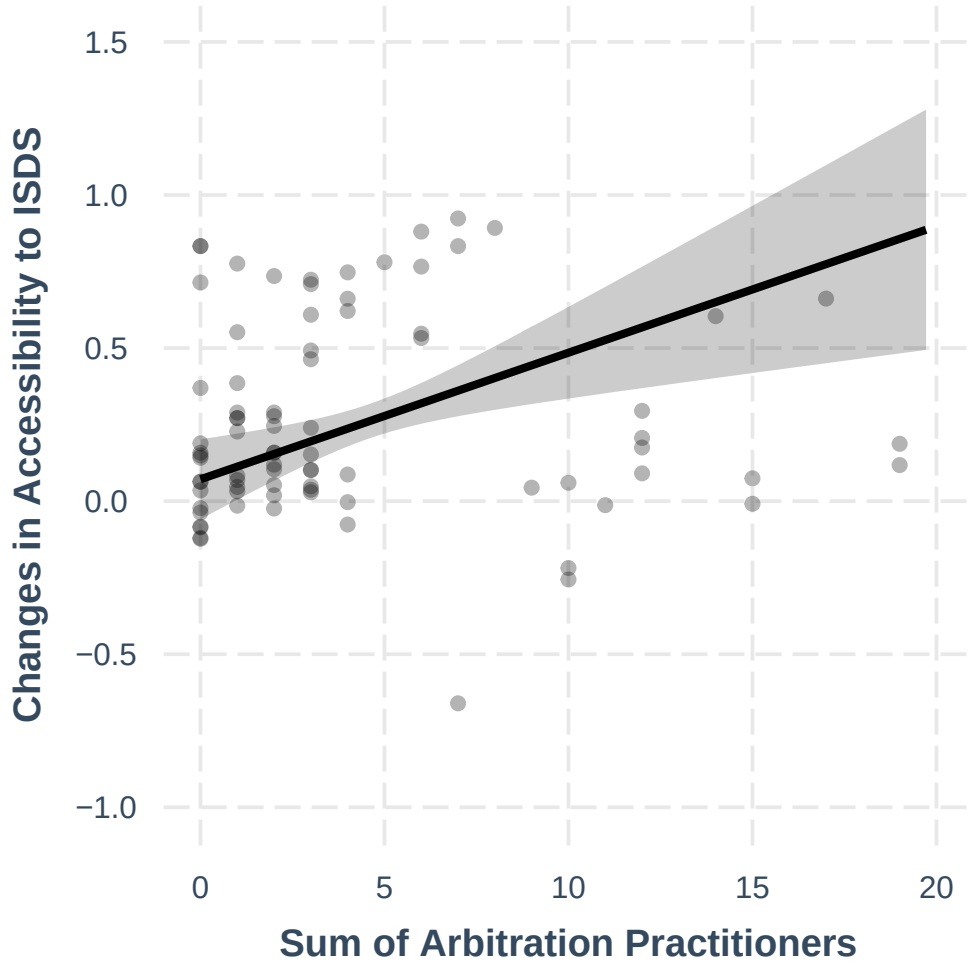

Figure A.8: Predicted Effect of the Sum of Arbitration Practitioners

The List of Interviewees

Table A.5: The List of Interviewees

Date	Interviewee	Experience	Alias
03/01/2023	A lawyer working at a US law firm specializing in investment arbitration	Less than 5 years	Agatha
05/25/2023	A lawyer working at a US law firm specializing in investment arbitration	Less than 5 years	Mark
06/05/2023	A lawyer working at a US law firm specializing in investment arbitration	Less than 20 years	Ross
06/09/2023	A lawyer from East Asia specializing in investment arbitration who previously worked at the home-state government	Less than 20 years	Rebecca
06/14/2023	A full-time arbitrator from East Asia who previously advised the home-state government	Less than 30 years	Douglas
02/20/2024	A government officer in South America who previously re-negotiated bilateral investment treaties	Less than 30 years	John

Variations of Accessibility to ISDS

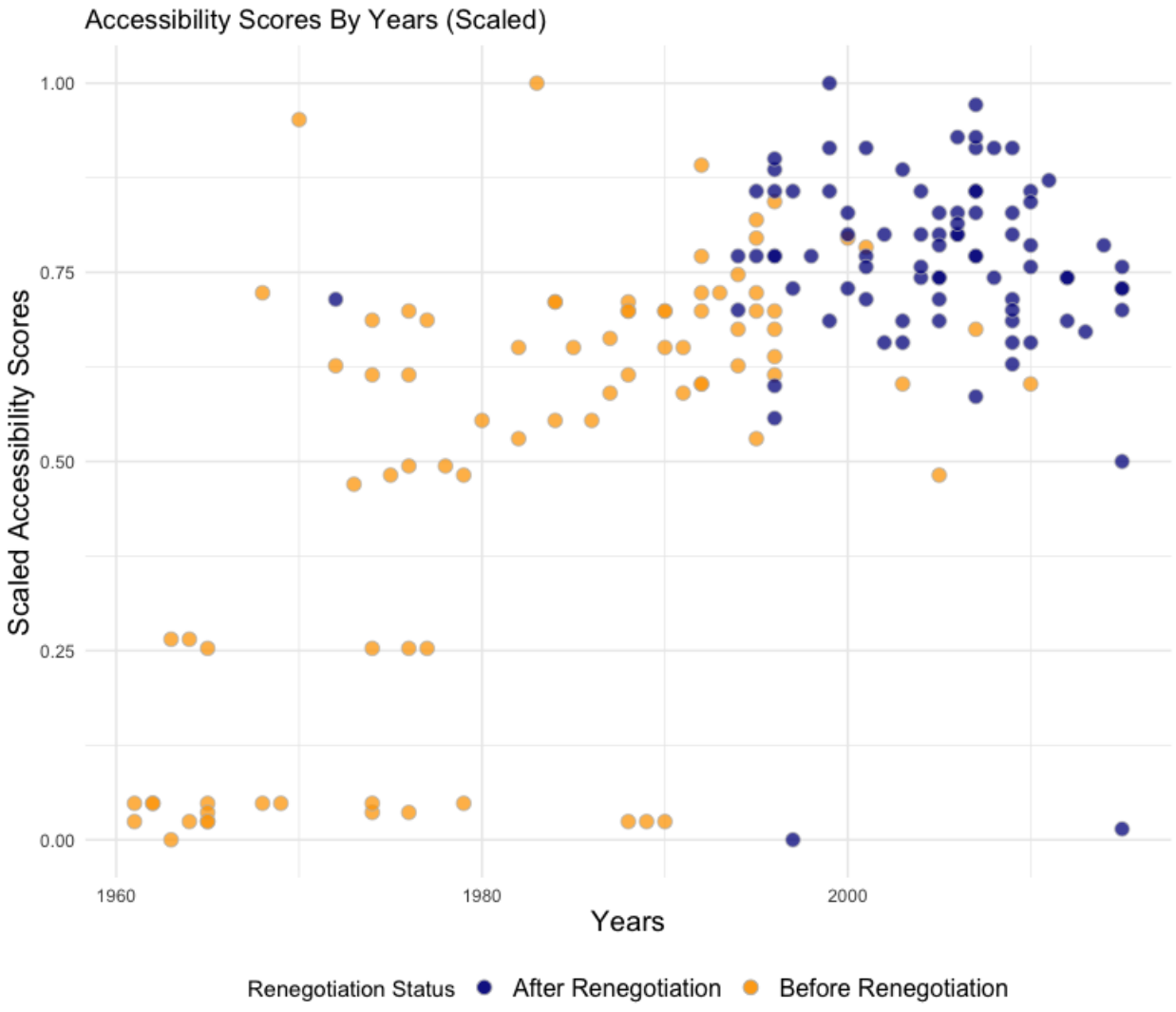

Figure A.9: Variation of Accessibility to ISDS