Are Arbitrators Political? Evidence from International Investment Arbitration[*]

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Abstract

This paper examines the role of arbitrator background for outcomes in arbitration between foreign investors and the host states. We construct a unique personnel data set of more than 500 arbitrators who have been appointed to adjudicate investment disputes before the International Centre for the Settlement of Investment Disputes (ICSID). Among presiding arbitrators appointed by ICSID and arbitrators whose votes are revealed, we find that the tribunal decisions are weakly correlated with an external measure of legal strength but strongly correlated with arbitrators' policy preferences. When the presiding arbitrators' policy preferences are closer to those of the arbitrators one party frequently appoints, the tribunal decisions bias toward that party. Among the "bias" factors, an arbitrator's developing status is most prominent. We also show that a standing tribunal may give greater room for arbitrators to bring their policy preferences to bear on disputes before them.

1 Introduction

Investment treaties are a crucial instrument underwriting economic globalization. Under more than 3,000 investment treaties currently in force, foreign investors enjoy wide-ranging protection against measures by host states that affect their investment. Substantive guarantees in investment treaties include non-discrimination, no expropriation without compensation, and fair and equitable treatment. Their stated purpose is to protect cross-border investments by insulating investors from political risk in host countries, and thereby increase cross-border investment flows.

Central to the investment treaty regime is the resolution of investment disputes through investor-state arbitration. To date, investors have brought more than 700 arbitrations against host states. For example, Phillip Morris (2015) sought billions of dollars in compensation for Australia's plain packaging law on tobacco products. Investor-state arbitration operates outside the host state's own legal system and allows foreign investors to obtain binding monetary awards against host states, backed by international enforcement. The rapid growth in the number of disputes has focused public attention and growing criticism on investor-state arbitration. Critics denounce investment treaty tribunals as 'secret courts' (DePalma 2001) comprised of party-appointed and 'biased' arbitrators (Eberhardt and Olivet 2012). The system, according to Senator Warren, is 'rigged' in favor of big capital and corporate lawyers, as quoted in (Hamby 2016).

These critiques are not without grounds. An investment arbitral tribunal typically consists of three arbitrators: two appointed by each disputing party and a presiding arbitrator appointed either by agreement of the disputing parties or by an arbitral institution. In contrast with the court system in which judges are assigned to cases based on some formula, in arbitration each disputing party typically selects one arbitrator itself.[1] Not surprisingly, such a selection procedure brings into the system arbitrators' incentives to bias toward their appointing parties. By contrast, the appointment of presiding arbitrators is relatively independent of party interests. However, their decisions may bias toward the party to which they have closer connections in terms of policy preferences or business benefits. Furthermore, arbitrators are connected in various ways in the market place and belong to different clubs, and they may play politics when working collectively. Unlike judges who are appointed for life or for fixed terms, investment arbitrators are appointed for a single dispute only. The discipline from job security or reputation may be weak. An effective appeal mechanism is lacking. These concerns have fueled a debate on the legitimacy of arbitrators deciding investment disputes (Paulsson 2010, Giorgetti 2014).

This paper examines the effects of arbitrator background on international investment arbitral decisions. In particular, we explore the role of arbitrator policy preferences and ideology ("politics") for arbitration outcomes, and investigate how arbitrators' incentives affect

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[1]This is known as the principle of party autonomy, according to which the composition of the arbitral tribunal depends on the wishes of the disputing parties.

arbitration decisions. We address three specific questions: Do non-legal factors, such as socialization or personal background of arbitrators, drive arbitral outcomes? To what extent do arbitration outcomes differ systematically depending on arbitrator policy preferences relative to incentives? Under what circumstances are the effects of arbitrators' personal backgrounds stronger?

To advance this study, we construct a unique personnel data set of more than 500 arbitrators appointed to adjudicate investment disputes before the International Centre for the Settlement of Investment Disputes (ICSID). We focus on ICSID arbitration for two reasons. First, it is the most important type of investor-state arbitral tribunal, which has adjudicated a wide range of disputes arising from cross-border investments.[2]Second, data on ICSID cases are relatively complete. We combine data from the ICSID websites and hand-collected personnel information on arbitrators from various sources, supplemented with detailed information on the disputing parties. Most significantly, we asked a panel of five external experts in investment arbitration to evaluate a large number of cases. Based on their evaluation, we construct an independent measure of the legal strength.

The article proceeds as follows. Section 2 lays out the essential background on the appointment process in ICSID arbitration and explains the incentives of ICSID arbitrators. Section 3 sets out our hypotheses. Section 4 describes our dataset and variables. Section 5 contains the empirical analysis. Section 6 concludes.

2   Background

In international arbitration, a widespread, formalist view holds that the arbitrators only apply the law, irrespective of their policy beliefs and backgrounds. This position establishes, preserves or augments arbitral legitimacy, culminating in the claim that arbitration is a depoliticized mechanism for settling foreign investment disputes (Shihata 1986). Such formalism remains the dominant paradigm in investment arbitration and risks ignoring one of the central insights of legal realism, namely, that the law alone does not determine the outcome of disputes.

Concerns about possible bias from incentives are not unique to investor-state arbitration. They also arise in domestic arbitration. A good example is securities arbitration in the United States. To prevent possible bias, the majority on these arbitral tribunals needs to consist of public arbitrators (FINRA Rule 12402). Only the minority may be drawn from industry arbitrators, i.e. those who earn a large portion of their income working for financial sector companies. Yet critics alleged that the current definition of industry-arbitrator is too narrow (Choi, Fisch, and Pritchard 2010). In 2008, the Financial Industry Regulatory Authority (FINRA) amended the definition of "public arbitrator" by adding an annual revenue limita-

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[2]The 1965 ICSID Convention offers a standing facility to resolve disputes between foreign investors and host states. ICSID was off to a slow start. It registered its first case, Holiday Inn v. Morocco only in 1972. In the 1970s, ICSID registered a mere 9 cases. In the 2000s, however, ICSID registered more than 280 cases.

tion. To be eligible for appointment as president of FINRA arbitrations, individuals must not derive more than 10 percent of their annual revenue from financial institutions or devote 20 percent of their work to clients who are brokers or dealers.

In the legal realist tradition, judges, in addition to the law, also play an important role in deciding cases (Holmes 1897, Cardozo 1921, Frank 1930). Especially in more controversial areas of international investment law where the views of arbitrators may diverge, it is a possible that their background, life experience and ideology may influence how they decide cases. How an arbitrator balances competing considerations may hinge in part on a given arbitrator's view of the world, on their mindset based on their professional experience and on the incentive the arbitrator faces when making the decision (e.g. the arbitrator may be acting as counsel in other cases, or the fee income from the arbitration may constitute a significant percentage of the arbitrator's annual income).

In addition, investment law is traditionally more open-ended and less detailed than most national law, leaving even more room for the policy preferences of arbitrators and incentives to influence outcomes. Moreover, there is no possibility of appeal, unlike in national legal systems, such that arbitrators are not subject to the discipline resulting from possible review of their findings by a higher court.[3]

2.1 Arbitrator Selection by the Disputing Parties

By "selection" we refer to the process by which the disputing parties/ICSID choose arbitrators.[4] The parties to investment disputes and especially their lawyers typically spend a great deal of time and effort to scrutinize the background of arbitrators, their relationship with the parties, their published works and prior appointments. The disputing parties seek to appoint individuals they expect to have some favorable predisposition towards their case, without rising to the level of challengeable conflict of interest. For instance, parties may favour arbitrators who share a similar cultural or legal background (Bishop and Reed 1998, 401, Blackaby and Partasides 2015, para. 4.52). Conversely, both disputing parties may also agree on certain desirable characteristics of arbitrators: lawyers vs. non-lawyers, experienced arbitrators, efficient arbitrators, arbitrators with the language skills necessary for the conduct of the arbitration and arbitrators that offer good value for money.

The time spent on choosing the right arbitrators suggests that the personality and background of the arbitrator matter for arbitration outcomes. Otherwise it would be irrational for the parties and their lawyers to spend so much effort on selecting the 'right' arbitrators for their case.

There are two types of arbitrators in ICSID arbitration: (1) party-appointed arbitrators

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[3]Arbitrators find themselves in a position that is comparable to judges on national supreme courts – for both their decisions are not subject to appeal. In ICSID arbitration, there is however a limited form of review ("annulment") - but this limited to egregious cases and by design highly deferential to the findings of the arbitral tribunal.

[4]The arbitral institution formally appoints all arbitrators.

and (2) institutionally-appointed arbitrators. For institutional appointments, the appointing authority is ICSID's Secretary General. Irrespective of their mode of appointment, all arbitrators on an ICSID tribunal are supposed to be neutral and impartial. Their actual and perceived neutrality is essential for confidence in the fairness of investment arbitration. Investment arbitration claims ought to be decided on the merits, rather than on the basis of predisposition or interest in the outcome (Park 2010, 191). Arbitrators can be challenged if there are reasonable doubts about their impartiality, for example because the arbitrator has a business or other relationship with a disputing party. However, the threshold for such challenges is very high.[5]

Though they are subject to an obligation of neutrality, party-appointed arbitrators may represent the interests of their appointing party on arbitral tribunals. The risk is that such arbitrators assume the role of advocates for their appointing party. In extreme cases, party-appointed arbitrators may seek to engineer results favorable to their appointing party. According to one critique, the persistence of party-appointed arbitrators in investor-state arbitration casts doubt on the legitimacy and perceived neutrality of arbitration as an institution for resolving investment disputes impartially (e.g. (Paulsson 2010).

With respect to party appointments, the disputing parties are subject to few constraints as to who to choose as their arbitrator, most importantly the prohibition against arbitrators who lack impartiality and/or independence. The default appointment procedure under Article 37(2)(b) of the ICSID Convention is sequential, and unfolds in three stages (Rule 3, ICSID Arbitration Rules). First, the claimant appoints one arbitrator and proposes a president of the tribunal. Second, the host state appoints its own arbitrator and either approves the investor's proposal for president or proposes an alternative president. Third, if the host state rejects the investor's proposal for President, and proposes an alternative president instead, the investor either agrees with the host state's choice or refuses to concur.

The disputing parties can choose to nominate an arbitrator from ICSID's Panel of Arbitrators. The panel of Arbitrators is composed of almost 500 individuals.[6] Each of the more than 150 Contracting parties to the ICSID Convention may designate up to four individuals to the Panel (Article 13(1)), while the Chairman of the ICSID Administrative Council may nominate up to ten individuals to the Panel (Article 13(2)).

Crucially, however, the disputing parties can also look beyond the Panel of Arbitrators. They can choose any individual who meets the required minimum qualifications in Article 14 of the Convention (Article 40(2) ICSID Convention). In practice, parties often appoint arbitrators from outside the Panel of Arbitrators. By contrast, ICSID Chairman appointments

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[5]E.g. Alpha Projektholding Gmbh v. Ukraine, ICSID Case No. ARB/07/16 (rejected challenge on the ground that the party-appointed arbitrator and primary investor counsel were classmates at Harvard Law School); Suez, Sociedad General de Aguas de Barcelona SA and InterAguas Servicios Integralese del Agua SA v. The Argentine Republic, ICSID Case No. ARB/03/17 (challenge on the grounds that she was a non-executive director of UBS, which held equity stakes of more than 2 percent in two of the three claimants).

[6]See https://icsid.worldbank.org/apps/ICSIDWEB/icsiddocs/Pages/Panels-of-Arbitrators-and-Conciliators.aspx.

must be from the Panel of Arbitrators (Article 40(1)).[7]

2.2 Remuneration of ICSID arbitrators

As we have seen in the previous section, arbitrators lack tenure and a majority of them is selected by the disputing parties. They also differ from judges sitting in national courts – who typically have no financial interest in the cases before them – in terms of their incentives. Judges typically receive a flat salary from the government, irrespective of how many cases they hear or which way they decide cases. In arbitration, the financial payoffs for the arbitrators depend on the length or complexity of the arbitration, or the amount under dispute. This opens room for the incentives of judges and arbitrators to differ because.

ICSID arbitrators are entitled to reimbursement for "any reasonably incurred expenses" and a fee for each day of the proceedings.[8] Since 2008, the fee has been US$ 3,000 per day for meetings and other work performed.[9] Because there is no fixed fee per arbitration, in principle, the longer the arbitration, the better off financially the arbitrators are. On that basis, it is possible that arbitrators prefer a longer arbitration, holding all else equal, to maximize their fee income. For a full-time legal academic, working for 30 days on an ICSID arbitration could easily double their annual income.

The position is different for partners in leading private law firms. They often earn more than US$ 1 million annually. They typically charge up to US$ 1,000 an hour for counsel work (which is several times more than an ICSID arbitrator earns per hour), plus fees for their associates at several hundred dollars an hour. For them, working for 30 days on an ICSID arbitration is unlikely to increase their annual income by more than 10 percent. Relatively speaking, sitting as an ICSID arbitrator is a more attractive proposition in financial terms who are retired government officials or full-time academics.

3 Hypotheses

In international arbitration, a strong view holds that the arbitrators only apply the law, irrespective of their policy beliefs, financial incentives, and their personal background. However, numerous anecdotes, policy debates, and several academic studies throw doubts on the view that "the law rules". It is widely believed that arbitrators, as well as judges, are human beings who do not decide cases solely on the basis of the law. They have both intrinsic and extrinsic motivations to deviate from the law in their decision making. Intrinsically, arbitrators may have strong ideological preferences, policy outlooks, or particular mindsets that shape their interpretation of the law and of the arguments put to them by the disputing parties. Extrinsically, arbitrators may be concerned with how their arbitral decisions affect their own financial

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[7]With the agreement of the disputing parties, ICSID can also select someone who is not on the Panel of Arbitrators.

[8]ICSID Administrative and Financial Regulation 14.

[9]ICSID Memorandum on Fees and Expenses.

rewards, their other business interests, and reappointment opportunities. In this section, we develop a number of hypotheses concerning the effect of arbitrator policy preferences and incentives on the possible decision bias of international investment arbitrators.

3.1 Arbitrator Policy Preferences

Analyses of collegiate politics and political voting have a rich pedigree in the political science literature of US courts.[10] Courts are viewed as another political body, and judges become policy makers to some extent. Judicial outcomes then are partly driven by judicial politics or ideology.[11] One influential study is Sunstein et al. (2006), in which the authors find that US Circuit Court judges display ideological voting in a large number of controversial areas, based on the party affiliation of the president who appointed them.

In international dispute settlement involving states, the literature has singled out the developing status of adjudicators as a prominent source of bias. Posner and Figueiredo (2005) find that judges on the International Court of Justice favor the appointing state and states at similar levels of development and with a related political system. Voeten (2007) shows that judges on the ECtHR have a propensity to vote against their home state. Franck (2009) contends that arbitrators from developing countries are no less likely to affirm jurisdiction and uphold the host state's liability than their developed country counterparts. It remains an open question whether arbitrators from developing countries are biased toward developing countries in international disputes. Our prior belief is that arbitrators from developing countries are less likely to hold host countries liable because they are more familiar with the economic and social conditions in developing countries and thus are more sympathetic to developing host states.

Another influential view on the impact of arbitrators' personal preferences is the mindset

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[10]E.g. GLENDON SCHUBERT, QUANTITATIVE ANALYSIS OF JUDICIAL BEHAVIOR (1959); Sheldon Goldman, Voting Behavior on the United States Court of Appeals, 1961-1964, 60 AMER. POL. SCI. REV. 374, 379 (1966) (correlation between progressive political orientation and judicial outcomes in key areas); Stuart S. Nagel, Political Party Affiliation and Judges' Decisions, 55 AMER. POL. SCI. REV. 843, 846 (1961) (political affiliation matters for judicial outcomes); Neal C. Tate, Personal Attribute Models of the Voting Behavior of the U.S. Supreme Court Justices' Liberalism in Civil Liberties and Economics Decisions, 1946-1978, 75 AMER. POL. SCI. REV. 355 (1981); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. LEGAL STUD. 257, 281 (1995) (judges appointed by Democratic and Republican presidents do not differ in their treatment of civil rights cases); Timothy B. Tomasi & Jess. A Velona, All the President's Men: A Study of Ronald Reagan's Appointments to the U.S. Courts of Appeal, 87 COLUMN. L. REV. 766 (1987); Daniel E. Ho & Erica L. Ross, Did Liberal Justices Invent the Standing Doctrine? An Empirical Study of the Evolution of Standing, 1921-2006, 62 STAN. L. REV. (2010); RICHARD A. POSNER, OVERCOMING LAW (1995); William N. Eskridge, Overriding Supreme Court Statutory Interpretation Decisions, 101 YALE L. J. 331-447 (1991); Michael A. Bailey and Forrest Maltzmann, Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court, 102 AM. J. POL. SCI., 369 (2008).

[11]JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL, 65 (1993) ("The Supreme Court decides disputes in light of the facts of the case vis-?vis the ideological attitudes and values of the justices"); ibid., 86 ("Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he is extremely liberal."); DAVID ROHDE & HAROLD SPAETH, SUPREME COURT DECISIONS MAKING 72 (1976) (judges "base their decisions solely upon personal policy preferences).

argument that originates in sociological analysis of commercial arbitration (e.g., Dezalay and Garth 1996). The professional experience of arbitrators shapes their mindset, and how they decide disputes in arbitration. Bruinsma (2008) shows that judges on the European Court of Human Rights who are former diplomats interpret obligations under the European Convention more leniently. Roberts (2013) ventures that the 'mindsets' of arbitrators – such as the commercial law mindset deriving from having spent the bulk of one's career in private practice – might influence how arbitrators decide. We hypothesize that other things being equal, in international investment arbitration, arbitrators with work experience in government favor the host states whereas arbitrators with work experience in the private sector favor investors.

One emanation of bias view is to give higher importance to the protection of investment ("property rights") versus other societal goals such as local development or environment protection. For example, we might think that "conservative" arbitrators tend to favor the protection of property rights with few qualifications, whereas "progressive" arbitrators would tend to give greater weight to other societal values such as protection of the environment or public service delivery. Voeten (2007) finds that judges from former communist countries in Eastern Europe show more ideological commitment to rectifying human rights abuses in their home countries than judges from Western European nations. In the field of international investment, we expect that arbitrators who are specialists of public international law or public lawyer - whose work centres on the state as an actor - will share more concerns of the host states and thus favor them in their decision making than other arbitrators who are specialized in private law. Conversely, we posit that arbitrators, who have spent a substantial part of their career in private practice (attorney-arbitrators) are more likely to affirm jurisdiction and to award compensation to investors, as opposed to arbitrators who lack such private sector experience and spent most of their career in the public sector.

Summing up the above arguments, we propose the following hypotheses concerning the impact of arbitrators' policy preferences on their decisions.

Claim 1 *Arbitrator policy preferences bias their decision towards one party in an arbitration.*
H1a. Arbitrators from developing countries defer more to host states.
H1b. Arbitrators with work experience in government defer more to host states.
H1c. Arbitrators with work experience in corporations defer less to host states.
H1d. Arbitrators specialized in public international law or public law defer more to host states.
H1e. Arbitrators in private practice defer less to host states.

3.2 Arbitrator Incentives

Even if arbitrator policy preferences do not affect their legal decisions, the commonly expressed concerns about the lack of impartiality of investment arbitrators run deeper. Serving

as an ICSID arbitrator, for the most part, is not a full-time job. Many arbitrators advise claimants and host states in other investment arbitrations. Others are full-time academics. And still others have previously been in full-time public service, in the executive, legislature or as a national judge. This "revolving door" of investment arbitration could bias arbitrators, consciously or unconsciously, one way or the other, without necessarily rising to the level of a challengeable conflict of interest, and thereby threaten the neutrality of arbitration. Arbitrators may need to decide an issue that they – in their persona as counsel – are arguing in another case for the benefit of their client. Or an arbitrator could add dicta that help in a different dispute where the arbitrator acts as counsel.

Arbitrators for who arbitral fee income represents a very significant part of their income (e.g. full-time academics) maybe more likely to be swayed by financial incentives, compared to highly paid private practitioners for whom arbitral fee income is less significant.

In his public law critique of investment arbitration, Van Harten (2007) contends that arbitrators, "as merchants of adjudicative services, "have a financial stake in furthering [arbitration's] appeal to claimants", resulting in actual or potential bias against the host country. Another argument is the concern that arbitrators may have for their reputation (see e.g., Park 2010, 216-218). In our context, we posit that investors who routinely represent investors in investment cases are likely to scrutinize host state actions affecting investments more closely when they sit as arbitrators. They are more likely to question the integrity of the state's actions and may more readily regard them as arbitrary. By contrast, attorneys who often represent host states are likely to grant greater deference to the host countries in the regulatory sphere to establish their reputation as representatives of host states in the arbitrator labor market.

We summarize the above arguments as follows.

Claim 2 *Arbitrator incentives make them biased towards that resembles their interest.*
H2a. Arbitrators who act also as investment counsel defer less to host states.
H2b. Arbitrators who derive a significant part of their annual income from arbitrations (e.g. full-time academics) are more likely to uphold jurisdiction.
H2c. Arbitrators with a skewed appointment record favor the type of party that routinely appoints them.

3.3 The Trade-off between Preferences and Incentives

Arbitrator preferences and incentives may work in opposite directions. For example, when incentives are prominent, they may outweigh policy preferences, and arbitrators may vote for a result that favours the party which represents their material benefit rather than based on their policy preferences. Conversely, in the absence of significant incentives, arbitrator policy preferences are likely to play a stronger role in decision making.

The appointment process can affect the trade-off between intrinsic preferences and external incentives. For party-appointed arbitrators, the disputing parties are likely to have sought

to balance out these two factors when selecting their arbitrators. Thus, it is more plausible to test this trade-off using presiding arbitrators who are appointed either by agreement of the two disputing parties, or if they fail to agree, by ICSID. Relative to party-appointed presidents, ICSID-appointed presidents are more independent of the disputing parties. Thus, their policy preferences are likely to have a stronger impact on the decision outcomes.

Claim 3 *When arbitrator incentives are weaker, policy preferences have a stronger effect. H3. Policy preferences of presiding arbitrators appointed by ICSID play a bigger role in tribunal decisions than presiding arbitrators appointed by the disputing parties.*

3.4 Selection of Bias Factors

An alternative way of testing the existence of bias is to ask the following question: is there a set of personal attributes that systematically predicts decision outcomes? If the answer is affirmative, rational disputing parties will endeavor to select the "right" combination of personal attributes while the institution (e.g., ICSID) should avoid appointing tribunal presidents with personal attributes that bias them toward either party. In the current empirical context, we will examine whether a presiding arbitrator whose combined personal attributes are similar to those of the arbitrators appointed by one party tends to make decisions in favor of that party. With such an examination, we also aim to discover selection bias factors.

Claim 4 *There exist a set of personal attributes that bias the presiding arbitrator's decision toward one party. H4. Presiding arbitrator are biased towards the party-appointed arbitrator to whose policy preferences they are closer.*

3.5 Panel Effects

The existence of panel effects in legal decisions is well recognized in domestic courts (e.g. Revesz 1987). These studies point to an important role of collegial politics for judicial outcomes. ICSID tribunals are not unitary actors, but made up of three individual arbitrators. Collegiate politics may equally affect investment arbitration outcomes. On a given tribunal, the three arbitrators on a tribunal may have similar or divergent preferences. Elite arbitrators interact frequently, and thus play repeated games. These elite arbitrators are members of an exclusive and lucrative club, whose members are sometimes compared to a club of mainly European, grey-haired and well-connected men (Dezalay and Garth 1996, 10, 18-20, 34-42).

Conformity pressures in this close-knit community of ICSID arbitration are likely. Arbitrators could dampen or amplify each other's policy preferences. Persuasion, collegiality or deference to hierarchy may all play some role. One arbitrator may go along with the majority, despite initially different views, because his co-panelists convinced him, or for other strategic reasons. The deliberative process on arbitral tribunals is also likely to matter. Intuitive

judgments of judges or arbitrators might entail quick decisions that tend to align with their policy preferences – but these judgments may be well be revised through discussions and deliberations with colleagues on the panel.

Thus,we can expect similar panel effects to operate between arbitrators. To that end, we examine whether voting differs depending on the characteristics of the two other arbitrators on the panel.

Claim 5 *A panel effect exits such that the aggregation of personal characteristics amplifies bias.*

H5. The more arbitrators share a given personal characteristic, the stronger is the impact of that characteristic on arbitration decisions.

4   Data

Our dataset consists of two parts. The first part contains details on 633 ICSID cases from 1972 to 2016, including all decided, discontinued, settled and pending cases. The second part consists of an extensive list of personal characteristics of 517 arbitrators who sat in at least one ICSID arbitration. A detailed rule of how we coded the variables used in this paper can be found in the online appendix.

4.1   Data Collection

With respect to the ICSID cases, we obtained basic information on every decided and pending ICSID case from the ICSID website. The information collected from the ICSID website includes the name of the case, procedural dates, status of the proceedings, legal representatives, subject matter and the tribunal's composition, including arbitrator names, nationalities, and who appointed them. In many cases, the ICSID website has the electronic version of decisions or references to places where the award was published. However, in some cases, no decision was available on the ICSID website itself. In such cases, we looked at other sources, including Andrew Newcombe's Investment Treaty Arbitration website at the University of Victoria and the database InvestmentClaims. Coding the arbitrator's appointment status was particularly challenging. For cases registered sine 2010, the ICSID website includes details about who appointed each arbitrator. For about 40% of the cases in our dataset, we culled this information from the head notes of the InvestmentClaims database. For another 30%, we used the procedural history of the arbitral awards. When the procedural history does not contain information on who appointed a particular arbitrator, we obtained confirmation of appointment status directly from individuals involved in the arbitration.

Regarding the characteristics of ICSID arbitrators, we collected data on gender, year of birth, nationality, legal origin, specialization in public international law, whether the arbitrator is a full-time academic, full-time private practitioner or frequent counsel to investors, and

expert in ICSID arbitrations, whether the arbitrator attended an elite educational institution and whether the arbitrator is an elite ICSID arbitrator – background factors which serve as proxy for the arbitrator's unobservable policy preferences. For some variables in our dataset, such as experience in the executive, legislative and judicial branch or whether the arbitrator is a specialist in public international law or a full-time academic, we have data on all 517 arbitrators. For others, in particular for years of education, highest degree and year of birth we have some significant gaps, especially as regards arbitrators from developing countries, where personnel information is generally more difficult to collect. We also collect some personnel information from trade publications on international arbitration, the websites of law firms and law schools, the Martindale/Hubbell Law Directory, Who is Who in Public International law, obituaries in major newspapers such as the New York Times or the Times, and finally from Google.

Of the 633 ICSID cases in our dataset, arbitration tribunals have been established in 543 cases. However, the sample we will study is considerably smaller for several reasons. A significant number of cases are currently still pending before ICSID tribunals. After excluding these cases and annulment, interpretation, and discontinued cases, we obtained a sample of 353 cases. Among these, more than 70 cases have been settled by the two disputing parties, and in approximately 40 cases the arbitral awards remain confidential. Eventually, we end up with a sample of 231 cases, in which the tribunal has issued at least a decision on jurisdiction.

4.2   Outcome Variables

The main outcome variables we are interested in are the arbitral decisions: Jurisdiction and Liability. Jurisdiction, which concerns whether the tribunal is competent to decide the dispute or not, is by definition a binary decision. We define it to be 1 if the ICSID tribunal affirms jurisdiction and 0 otherwise. It is more difficult to code Liability, as this decision involves findings by the tribunal on typically several claims by the investor and an amount of monetary compensation. We do not have the damages requested and awarded by the tribunal for a significant number of cases. A second complication with the numerical measure of liability is the large discrepancy on average between the amount of compensation requested by investors and awarded by the tribunal.[12] For these reasons, we code the liability outcome also as a binary variable. Specifically, Liability is defined as the tribunal awarding some positive damages to the investor. That is, if the investor is awarded damages > US\$ 0, then this outcome variable takes on the value 1. Otherwise, it is coded as 0. Such a measure captures a statement of liability in principle. We obtained this liability variable for 147 cases.

For the purpose of investigating the impact of personal characteristics, we would ideally want to know decision outcome at the level of each individual arbitrator. That is, we would

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[12]A good example is the SIAG v. Egypt case, where the arbitrators affirmed Egypt's liability in principle. The investor had requested damages of US\$ 230 million, and the tribunal granted only US\$ 74.5 million. Subsequent to the award, the investor and Egypt settled for much less than US\$ 74.5 million. As in this example, a state may not pay the full compensation awarded by the tribunal.

like to observe the vote of each individual arbitrator. However, in the vast majority of cases, we only have a joint decision by all three arbitrators. That said, in approximately 50 cases an arbitrator explicitly expresses his or her disagreement with the tribunal decisions in a dissent. Using these dissents, we are able to infer the vote of individual arbitrators.

Throughout the paper, except for the cases with dissents, we assign the tribunal joint decision to all arbitrators on the tribunal. By contrast, we coded the decision of the dissenting arbitrator to be the opposite of the majority vote. For instance, if the majority affirmed jurisdiction ("1"), then the arbitrators dissenting vote would be codes as ("0"), and likewise for the decision on liability. The outcome measure constructed in this way is an approximation, but since our focus is on the presiding arbitrators who are likely to be decisive decision makers as the median voter, it is fair to assume that the tribunal decision also reflects the presiding arbitrator's decision.

4.3   Case Characteristics

It is important to collect information on all ICSID cases. Statistically, some case characteristics are likely to be correlated with the assignment of arbitrators to cases. Without controlling for case characteristics in our regression analysis, the estimated effects of personal attributes are likely to be seriously biased due to omitted variables. In other words, including case characteristics helps deal with the selection bias. Moreover, the correlations between case characteristics and decision outcomes can tell us something about the tribunal's deviation from the law in its decision. For instance, if a tribunal does not affirm jurisdiction for a case even though the tribunal's jurisdiction under the applicable investment treaty is straight forward, or the tribunal does not affirm the host state's liability, even though the state has expropriated an investment, its decision is more likely to be biased.

The case characteristics that we use in the empirical analysis mostly relate to the host state, including its GDP per capita (in PPP terms) in the year when a case was registered, its legal origins (e.g., Common Law, French, German), its property rights index scaled between 0 and 100 by the Heritage Foundation, and the Transparency International Score in the Corruption Perceptions Index (ranked from 1 to 10) in the year of the decision. For investors, we will use GDP per capita (in PPP terms) as a proxy for the level of economic development in the investor's home country. Based on the subject matter of the dispute, we construct a variable to indicate the primary industry to which the investment in the host country belongs.

One unique variable that we constructed is the legal strength of an arbitral case. In particular, we asked a panel of five legal experts in investment arbitration the following question: "Please give a global evaluation of how strong the investor's case is. Disregard the ultimate outcome of the case. The coding should reflect your ex ante assessment of the likelihood of success before the arbitration is filed. Please leave blank where you are unable to evaluate." In response to our question, each expert assigned an integer score increasing from 1 (very weak) to 5 (very strong) to the cases that he or she felt confident to evaluate. For each

case, they assigned two scores, respectively, for the legal strength in affirming jurisdiction and holding the host state liable. We then took the average of the experts' scores that are available for each case and rounded the average to the nearest integer. In this way, we constructed the legal strength measures for both jurisdiction and liability, referred to, respectively, as Jurisdiction Strength and Liability Strength, at the case level. Of the 231 cases in our study sample, the Jurisdiction Strength measure is available in 176 cases and the Liability Strength measure is available in 112 cases.

Table 1 reports the summary statistics of the main case characteristics in the sample that we use (the second column) and the larger sample including the cases that were privately settled or those whose decisions have not yet released (the third column). The case characteristics are very similar in almost every dimension in the two samples, suggesting that our sample is representative of all the ICSID cases. Investors registered most of the cases after 2000. A comparison of the GDP per capita of the host and investor countries shows that the majority of disputes are between developing countries and investors from developed countries. The average Property Protection Index of the host countries is 42.3. According to the Heritage Foundation, this low score means "The court system is highly inefficient .... Corruption is present, and the judiciary is influenced by other branches of government." A country of this kind is the Republic of Congo. The average of the Corruption Perceptions Index of the host countries is 3.42, indicating a significant level of corruption perceived by citizens. Countries of this level of corruption perception are Thailand, Morocco, and India. In terms of industry distribution, the cases relate mostly to mining, natural resources, and services. In terms of the legal origin, more than half of the host countries belong to the French law family.

4.4   Personnel Information

Policy preferences. We use five binary variables to capture an arbitrator's policy preferences. Developing Status is a dummy variable which is equal to one if an arbitrator is from a developing country and zero otherwise. Public International Law is a dummy for arbitrators specialized in public international law - the branch of legal studies that looks at the law between states that is independent of national law. Similarly, public Lawyer is a dummy for arbitrators specialized in public law, that is in constitutional and administrative law. Executive Branch is a dummy for arbitrator experience in the executive branch of government. Corporate Experience is a dummy for arbitrators who have worked for corporations.

Incentives. We use another three binary variables to capture incentives that may affect arbitral decisions. Investment Counsel is a dummy for arbitrators who have worked as a lawyer to investors. Private Practice indicates an arbitrator's working experience as a legal practitioner in the private sector (i.e. in a law firm). Academic is a dummy for arbitrators who have spent a substantial period of their career as a full-time academic. Relating to an arbitrator's career concern, we also code an arbitrator's frequency of being appointed as a

president, claimant arbitrator, or respondent arbitrator within the ICSID sample of 231 cases that we study in this paper.

Other background information. We also collected data on several other personnel variables. Gender is a dummy for female arbitrators. We use a dummy to indicate whether an arbitrator ever received his or her colleague and above education in an OECD country. Finally, we code two duration variables: the number of years an arbitrator worked in international organizations and the years the arbitrator was a judge in national or international courts. We also include experience as a judicial clerk in this measure.

Table 2 presents the summary statistics of the above variables for three types of arbitrators: presidents, arbitrators appointed by the claimant, and arbitrators appointed by the respondent. In the sample of 231 cases, there are 101 arbitrators who are appointed as presiding arbitrators. In 8 cases, the tribunal consists of only the president. Thus, there are 129 claimant arbitrators and 128 arbitrators who are appointed by the parties. The first row of each variable reports the mean, which is calculated based on observations instead of arbitrators. In this way, we avoid placing the same weight on arbitrators who are frequently appointed in the tribunal and those who are only appointed once or twice.

Our study will primarily focus on the presiding arbitrators. Approximately 20% of them are from developing countries. About 35% are specialists in public international law and 15% are specialists in public law. 43% of presidents have spent time in the executive branch of a government, while a much smaller share of them (16%) have work experience in corporations. In terms of incentives, more than half have given legal advice or represented investors in other arbitrations; more than 60% work as private practitioners; and 38% are full-time academic. Presiding arbitrators are likely to be repeated hired. On average, these 101 arbitrators are appointed as presidents nearly 7 times, nearly 4 times as claimant arbitrators, and slightly more than twice as respondent arbitrators. In less than 10% of the cases, a female arbitrator is appointed as an arbitrator. (This is mostly driven by one single arbitrator, Professor Brigitte Stern, the arbitrator with the highest number of appointments in our sample). More than 90% of presiding arbitrators have received their higher education in OECD countries. On average, their experience in international organizations is 1.21 years, and their experience as judges is 4.64 years.

In almost all personal characteristics, presiding arbitrators lie in between the two party-appointed arbitrators. On most dimensions, claimant arbitrators differ substantially from respondent arbitrators. For example, investors are much less likely to select arbitrators from developing countries, arbitrators specialized in public international law or public lawyer or academics. Conversely, investors tend to select arbitrators who have experience as investment counsel or as private practitioners. We formally identify the factors that influence the parties' selection of arbitrators in a later section.

5   Empirical Analysis

In this section, we explore the data we collected to test the hypotheses that we proposed in Section 3. In the basic analysis, we test the first two sets of hypotheses (Claims 1 and 2) regarding the effects of arbitrator policy preferences and incentives. We then go further to test the more subtle hypotheses – the preference-incentive trade-off (Claim 3) and the existence of selected bias factors (Claim 4). Finally, we examine the panel effect (Claim 5).

5.1   Basic Analysis

5.1.1   Empirical Strategy

In the baseline model, we estimate the following econometric specification:

$$Decision_{ij} = \alpha + \beta_1 Policy_i + \beta_2 Incentive_i + \beta_3 Past\_App_i + \theta Legal\_strength_j + X_i'\delta + X_j'\gamma + \epsilon_{ij},$$

where the subscript i indexes individual arbitrators and j indexes each case. Thus, the dependent variable $Decision_{ij}$ should be read as arbitrator i's decision in case j. Among the independent variables, $Policy_i$ and $Incentive_i$ capture arbitrator i's policy preferences and incentives, respectively. Specifically, $Policy_i$ includes an arbitrator's developing status, working experience in the executive branch of the government, specialization in public international law, and working experience in corporations. $Incentive_i$ includes an arbitrator's working experience as a public lawyer and as an investment counsel. All these variables are as defined as in the above section. $Past\_App_i$ indicates arbitrator i's appointments in the ICSID arbitration cases before the current case. Finally, ϵ_{ij} is the random error term.

One coefficient of particular interest is θ, which captures the correlation between the decision outcome and $Legal\_strength_j$ – the external measure of a case's legal strength. As previously discussed, if the arbitration decision is made based solely on legal principles, we should expect a close correlation between the tribunal's decision and the external measure of legal strength. The absence of such a correlation will suggest the existence of bias either through the selection of arbitrators based on certain characteristics or because of the deviation from the law by the arbitrators in their decision-making. The drawback of including this variable in regression is the loss of observations because the legal strength measure is not available for all cases.

In the above specification, we also include two sets of control variables. The first set concerns arbitrator personal characteristics such as gender, academic, education, judicial experience and experience in international organizations. The second set of controls concerns case characteristics, such as GDP of both the host country and the investor's home country, the host's property right protection, corruption index, and legal origin, the industry concerned, and the time period of a case. It is important to control for these case characteristics in the regression because they are likely correlated with the appointment of arbitrators with

certain policy preferences and incentives.

We use two dependent variables: Jurisdiction and Liability. Both are dummy variables as defined in the previous section. Given the binary nature of these outcome variables, we primarily use a Probit regression model, which is a maximum-likelihood estimation method. The drawback of the Probit estimator is its sensitivity to the sample size or even computational infeasibility when the sample is small. Therefore, when our attention is restricted to a small sample, we will use the OLS estimation, which is more stable, despite its potential drawback of specifying a linear probability model and allowing for the predicted value outside the domain between 0 and 1.

For most cases, we observe the two outcome variables only at the case level, without knowing each arbitrator's actual decision. Therefore, we focus on the presiding arbitrators whose decisions are considered decisive and whose votes are likely to be the same as the case outcome as they are the median voter. We will also investigate the votes in the cases in which some arbitrators explicitly expressed their disagreement with the tribunal's decision in the form of dissents. Finally, we examine the observations on the party-appointed arbitrators to see if any of their personal attributes are correlated with the case decisions.

5.1.2 Results

Table 3 reports the Probit-regression results in the sample of all the presiding arbitrators, as specified above. In the first two columns, the regressors only include policy preferences with control of other personal characteristics but without case characteristics. This simplest specification aims to look at the effects of policy preferences without influence from any other factors. In the next two columns, we add the control of case characteristics in the regression. In Columns 5 and 6, we add the measures of incentive factors. In the last two columns, we add the measures of legal strength. They are the most complete specification in our regression analysis.

Several results are notable. First, among the policy-preference variables, being a presiding arbitrator from a developing country is negatively correlated with the decision to affirm jurisdiction or liability, although the correlation with liability is not statistically significant. Second, among the policy-preference factors, work experience in the government and being a specialist in public international law has no significant impact on either jurisdiction or liability decision. As expected, work experience in corporation is positively correlated with holding the host states liable. However, surprisingly, being public lawyers has a strong positive effect on the liability decision, and being private practitioners has a negative strong effect on the liability decision. Third, for the two incentive factors, work experience as investment counsel does not affect the decision, while being an academic has a strong negative effect on the liability decision. Fourth, concerning the effect of past appointments, there is modest evidence that being appointed more frequently by the claimant is correlated with a higher probability of holding the host country liable. But this effect disappears when legal strength

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is included. Finally, it should be noted that the external measure of legal strength is strongly correlated with the decisions in the expected direction. Moreover, when the legal strength measure is included in the regression, the Pseudo R-squared doubles. These final results suggest that it is important to include legal strength in the regression analysis.

Table 4 presents the results for the tribunal as a whole, using the most complete specification. The first two columns focus on the dissenting cases, in which all individual arbitrators' votes are known. We find a significantly negative effect of an arbitrator's developing status on the likelihood of affirming jurisdiction and liability. We also find that specialization in public international law is negatively correlated with affirming jurisdiction and liability, although the correlation with liability is not statistically significant. None of the incentive and appointment factors seem to matter for the decision outcomes except that there exists a weak negative correlation between the past appointment as respondent arbitrators and the likelihood of affirming liability. Interestingly, when several personal attributes have strong effects on the decision outcome (Column 1), the correlation between the measure of legal strength and tribunal decisions is weak and statistically insignificant. This suggests that decision making that deviate from legal principle and is strongly influence by personal preferences can a source of dissent.

In Columns 3 and 4, we pool all arbitrators together with the dependent variable being the tribunal decision unless in the dissent cases in which we use the known votes from arbitrators. Except for a positive correlation between Private Practice and Jurisdiction, we do not find any significant effects of personal attributes on the decision outcomes in this sample with party-appointed arbitrators. This suggests that the policy preferences and incentives of the arbitrators appointed by opposing parties are likely to offset each other and leave decisions to presiding arbitrators.

Using the same specification and the same dependent variables, Columns 5 and 6 report the results for arbitrators appointed by the claimant, and Columns 7 and 8 report the results for arbitrators appointed by the respondent. We find several somehow surprising results. First, claimant arbitrators from developing countries are more likely to affirm jurisdiction, a result that contradicts the finding in the sample of presiding arbitrators (Table 3). Second, respondent arbitrators with work experience as investment counsel – an pro-investor attribute – are strongly negatively correlated with affirming jurisdiction and holding the host states liable. These two results can be explained by the selection of party-appointed arbitrators: the fact that an arbitrator with attributes seemingly less desirable for a disputing party is indeed selected by that party implies that this arbitrator must have some other unobservable attributes that are strongly desirable for the party. Finally, arbitrators with private practice experience are more likely to affirm jurisdiction in all samples in Table 4. When these arbitrators are appointed by the respondent party, they are more likely to hold their appointed party liable. This result contradicts the finding for presiding arbitrators in Table 3.

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5.1.3 Discussion

Drawing on the findings in Tables 3 and 4, we here briefly discuss their implications for the hypotheses we proposed. First, we find that being an arbitrator from a developing country is in general negatively correlated with affirming jurisdiction and holding the host states liable. These negative correlations are particularly strong in the sample of dissenting cases. This finding provides support to Hypothesis H1a, confirming our prior belief that developing status is an important policy preference that is likely to impact on an arbitrator's decision making. Second, concerning the mindset argument, we find no significant correlations between government experience and specialization in public international law and pro-state decisions. But we find some evidence on the positive correlation between work experience in corporations and pro-investor decisions, a result supporting Hypothesis H1c. The effects of Public Lawyer and Private Practice on decisions are opposing to our hypotheses in the sample of presiding arbitrators, and but are somehow consistent with our hypotheses in the sample of dissenting cases. This suggests that these two factors may reflect not only arbitrators' policy preferences but other concerns such as incentives and reputation.

Third, concerning the incentive factors, among presiding arbitrators, we do not find any significant effect of being investment counsel on decisions and some evidence on a negative effect of being academic on liability. With regard to the effects of appointment history, we find some weak evidence in support of Hypothesis H2c. In general, it is far from clear how incentives shape arbitrators' decision making.

5.2 Appointment Modality

We distinguish the presiding arbitrators by their appointment modality to test Hypothesis H3, which states that the policy preferences of the institution-appointed arbitrators play a more significant role in tribunal decisions than those of the arbitrators whose appointment is agreed upon by both parties. In particular, we divide the presiding arbitrators into two groups – those appointed by ICSID and those appointed upon agreement between parties. Within each group, we estimate the effects of policy preferences and incentive factors on tribunal decisions as in the previous sections. Given that the sample size in each group is considerably smaller, we use the OLS, instead of the Probit, estimation. Table 5 reports results.

The first four columns of Table 5 present the results for the sample of the ICSID-appointed presidents. Several interesting results are notable. First, the presidents from developing countries are less likely to hold host countries liable while those with work experience in corporations are more likely to hold host countries liable. Consistent with the previous findings in Table 3, these two effects are now considerably stronger and more accurately estimated despite the small sample size. Second, absent in the whole sample, there is a strong positive correlation between work experience in the government and the liability decision. This result rejects Hypothesis H1b. Third, the effects of past appointments are somehow

surprising. Presiding arbitrators who were more frequently appointed as tribunal presidents are less likely to affirm liability, while those who were more frequently appointed by the respondent party are more less likely to affirm jurisdiction but more likely to hold host countries liable. These results in general oppose Hypothesis H2c. This suggests the impact of the career and reputation concerns on tribunal decisions are not as simple as we posit. Finally, perhaps the most interesting result is in Column 4, where we find that associated with strong effects of several policy-preferences variables, the correlation between legal strength and liability decision is rather weak and statistically insignificant.

The remaining four columns present the results for the sample of the party-appointed presidents. In sharp contrast with the results in the sample of the ICSID-appointed presidents, none of the personal characteristics seems significantly correlated with the decision outcomes with the exception that specialization in public international law is negatively correlated with affirming jurisdiction. At the same time, the correlation between legal strength and liability decision is strong. These results provide support to Hypothesis H3, and suggest the existence of a trade-off between policy-preferences and incentive factors for presiding arbitrators. This finding has important policy implications for the organizational design of arbitral tribunals.

5.3 Selection of Bias Factors

In this subsection, we examine our previous conjecture that there exist a set of personal attributes that bias the presiding arbitrator's decision toward one party (recall Claim 4 in Section 3). To this end, we want to construct a measure that captures the similarity between presiding arbitrators and arbitrators who are frequently appointed by one party but not the other. Then, we investigate whether this similarity measure predicts tribunal decisions. This is a test of Hypothesis H4.

5.3.1 Empirical Strategy

We employ a two-stage regression analysis. In the first stage, we predict the probability that a presiding arbitrator is appointed by a particular party. This probability can be obtained by first regressing the frequency of an arbitrator being appointed by a party, say, the claimant, on a set of selected personal attributes in a sample of non-presiding arbitrators. The coefficients retrieved from such a regression are then used as weights to construct a linear combination of the set of selected personal attributes in the sample of interest – the presiding arbitrators in the current case. This weighted average forms a predicted probability of a presiding arbitrator being appointed by the claimant party if he or she is available for party appointment. It is also a measure of similarity between a presiding arbitrator and arbitrators who are more likely to be appointed by the claimant in the pre-selected dimensions of personal attributes.

In the second stage, we regress the tribunal decisions on the predicted probability/similarity constructed from the first stage in the sample of presiding arbitrators, controlling for an arbitrator's past appointment, case characteristics, and legal strength. The coefficient of the

predicted probability captures the aggregate effect of the selected personal attributes on the decision outcomes.

5.3.2 Results

Table 6 reports the results from the first stage regression. To help identify the personal attributes that are selected systematically by one party but not by the other, we restrict the sample to party-appointed arbitrators. In the first column, we regress the number of appointment as a claimant arbitrator – the frequency of an arbitrator being appointed by the claimant party during our sample period – on the entire set of personal attributes, controlling for case-fixed effects. In the second column, we run a similar regression with the dependent variable changed to the number of appointment as a respondent arbitrator. Although uncommon, some arbitrators have been appointed by a claimant in some cases and by the respondent in other cases. The third column uses a differently-defined variable – a dummy indicating the role of an arbitrator as a claimant arbitrator. This way clearly defines the opposing appointment status for an arbitrator in each arbitration case – an arbitrator cannot take the value of 1 (being a claimant arbitrator) and 0 (being a respondent arbitrator) in the same case. The drawback is that it does not take into account the entire appointment history of an arbitrator. Because of the infeasibility of Probit regression with controls of case fixed effects in a small sample, we use OLS for all three regressions.

According to the first two columns of Table 6, investors systematically prefer arbitrators who have government experience, work as investment counsel, and receive their education in OECD countries, while avoiding arbitrators who are from developing countries and have experience as a public lawyer. In contrast, respondents systematically prefer arbitrators specialized in public international law or public lawyer, while avoiding arbitrators who have government experience, as investment counsel, and as academics. Interestingly, both parties dislike an arbitrator's experience in corporations. The finding that investors prefer, while host states dislike, arbitrators with government experience is unexpected, but it helps reconcile the puzzling strong positive correlation between government experience and holding host states liable for the ICSID-appointed presidents (recall Columns 3 and 4 of Table 5.

The respondent party has an unusually preference for female arbitrators. But this result is driven by one well-known female arbitrator as noted before. It should not be regarded as a systematic gender preference.

Based on the above results, we define a set of selection factors that one party strongly prefers while the other party does not: developing status, executive (government experience), public lawyer, investment counsel, and education in OECD countries. Except for "executive," all the other selection factors are consistent with the regression results in Column 3.

Tables 7A and 7B present the second stage results. The former table reports the results with Jurisdiction as outcome, while the latter reports the results with Liability as outcome. In all the regressions, the prediction of the probability that a presiding arbitrator is appointed

by the claimant party is based on the specification in Column 1 of Table 6, which uses the frequency of being appointed as a claimant arbitrator. The results are qualitatively similar when the predicted probability is obtained using the specification in Column 3 of Table 6. The difference across columns is the use of different sets of predictors in the first stage regression.

The first two columns of both tables use all the personal attributes as predictors for the probability of being appointed as a claimant party. The correlation between the predicted probability constructed in this way and either decision outcome is weak and statistically insignificant in the full sample (Column 1), but it is strong and statistically significant in the sample of the ICSID-appointed presidents (Column 2). This result lends further support to the view that ICSID-appointed presidents play a more important role in deciding outcomes than party-appointed presidents (Hypothesis H3).

In the next two columns, we use the selection factors, which are defined based on the results in Table 6, as predictors. The regression demonstrates a positive and significant correlation between the predicted probability of being appointed by a claimant arbitrator and the jurisdiction outcome in both the full sample and the sample of ICSID-appointed presidents. However, such a correlation disappears when the outcome variable is liability (Table 7B). These results suggest that the competing personal attributes that the two parties may have some influence on the jurisdiction decision, but have little impact on the liability decision which is a more substantial outcome.

In Columns 5 and 6, we use the policy preferences variables as predictors. For the jurisdiction outcome, the coefficient is statistically insignificant, but for the liability outcome in the sample of ICSID-appointed presidents, the coefficient is statistically significant and the size is almost the same as in Column 2, in which the entire set of personal attributes are used as predictors. These results are consistent with the previous finding that it is the policy preferences, rather than incentive, that primarily influence presidents' decision making. In the last two columns, we use the policy-preferences variables excluding Developing Status as predictors. Now, the coefficients in Column 8 are considerably smaller than those in Column (6), and the strong correlation of predicted probability of being appointed by investors with the liability outcome disappears. This result confirms that Developing Status is a prominent personal attribute that drives decision bias.

In general, the above findings provide some support to Hypothesis H4 as we are able to identify a set of personal attributes used by one party (investors in our analysis) such that the presiding arbitrators whose attributes are closer to this selected set bias their decisions toward that party. We find that such a set of bias factors are not those competing factors that the two parties choose but are more related to arbitrators' policy preferences.

5.4   Panel Effects

We have shown evidence that policy preferences have systematic effects on decisions of the presiding arbitrators, at least among those who are appointed by ICSID and thus not de-

pendent on appointments by the parties. To what extent do these effects reflect presiding arbitrators' genuine preferences or instead reflect the influence from the party-appointed arbitrators with similar personal background? The answer to this question is critical to assess the independence of presiding arbitrators in tribunal decisions and thus has policy implications regarding the design of arbitration tribunal. One way to address this question is to test whether there exists a panel effect in the sense that the policy preferences have a stronger effect when more than one arbitrator in the tribunal has the same policy preferences.

In practice, we aggregate individual arbitrators' personal attributes at the case level. For example, if $n \in \{0, 1, 2, 3\}$ arbitrators in the same tribunal are from developing countries, we code the variable Developing Status at the case level as n. This way of coding applies to all binary variables at the individual arbitrator level. When the variable at the individual level, such as the frequency of past appointment, is not binary, we add up the value of this variable for all arbitrators in a tribunal. Then, we regress the outcome variable on these case-level personal attributes with control of case characteristics.

Table 8 reports the OLS-regression results. In the first four columns, the sample includes all cases; in the last four columns, the sample only includes the cases in which the presiding arbitrator is appointed by ICSID. In the even-numbered columns, the regressions include the external measure of legal strength, and thus the sample size is smaller. In general, we do not find any significant effect of the policy preferences at the case level on decisions. One exception is the variable Executive, which is positively correlated with the liability outcome in the sample of the cases with ICSID-appointed presidents. The results in Table 8 suggest that the effects of individual preferences on decision outcomes are unlikely to be aggregated. One explanation is that presiding arbitrators make decisions independent of the influence from party-appointed arbitrators. Another possible explanation is that for party-appointed arbitrators, the incentive concerns outweigh their policy preferences and thus their policy preferences do not matter for the tribunal decisions conditional on their incentives to vote for the parties they represent.

6   Conclusion

Who the parties select as arbitrators is important for how the investment treaty tribunals operate and for the investment treaty regime's legitimacy (Pauwelyn 2015). The selection procedure matters because it may encourage the appointment of biased arbitrators without such bias amounting to a challengeable conflict of interest – the focus of this paper. Arbitrators may also be subject to a series of incentives – financial and because of other roles that they assume in the investment treaty regime.

The traditional, formalistic view of international arbitration overlooks the important role of arbitrator background and socialization. Arbitrators may fill ambiguities and gaps in such an evolving legal field such as international investment law based in part on their policy pref-

erences. As human beings, they bring policy preferences, their education, career background and their life experience to these arbitrations.

Our empirical analysis shows three main results. First, we find that arbitrators' policy views appear to influence their decisions, at least, in some cases, and that hence arbitrators do not simply apply the law as it stands when deciding investment disputes. When personal characteristics exhibit a strong correlation with decision outcomes, the correlation between a case's legal strength and its arbitral decision is significantly weaker. Second, among arbitrator personal characteristics, policy preferences outweigh incentives in their impact on arbitral decisions. This finding rejects the popular critique that international investment arbitration biases toward one party, particularly investors, because arbitrators wear multiple hats and are driven by incentives. Among a wide range of policy preferences, developing status matters a great deal: arbitrators with the nationality of a developing country are significantly less likely to affirm jurisdiction and liability. This result challenges the finding in previous studies and suggests that the disputing parties and arbitral institutions would be well advised to appoint more arbitrators from developing countries. Third, we find that when a presiding arbitrator is closer to one disputing party in terms of a set of personal characteristics, he or she is more likely to bias toward that party. But the characteristics that may cause decision bias are not those selected by the disputing parties when they choose their own arbitrators but are mostly related to arbitrators' policy preferences.

The Canada-EU Free Trade Agreement (CETA 2016) establishes a standing investment tribunal for this particular trade and investment agreement, in response to strong criticism of traditional investor-state arbitration with party-appointed arbitrators. First, the investment tribunal is comprised of 15 judges (selected jointly by the EU and Canada) and drawn from EU, US, and third country nationals. The state parties vet judges on the "roster" for this tribunal to ensure they have the appropriate qualifications for adjudicating international investment disputes. Importantly, in departure from the traditional approach, the disputing parties would not be able to choose the composition of their arbitral tribunals from the roster of arbitrators. Rather, the tribunal members would be randomly selected from that roster – and include one member from the EU, US, and a third party for each dispute.

The European Commission justifies this shift as a means to address the 'fundamental lack of trust' by the (European) public in the investment treaty regime and to provide for dispute settlement 'in full accordance with the rule of law' (European Commission 2016). This standing investment court is also meant to eliminate adverse incentives allegedly present in ad hoc arbitration. The rationale behind this policy shift is that only by granting investment arbitrators long-term tenure can we ensure that they decide investment disputes not based on their own private interests, but are truly independent of the disputing parties.

While it would be premature to draw general normative conclusions about how investor-state arbitration may be improved, the paper also showed that there may be a trade-off between arbitrator incentives and policy preferences. A standing investment tribunal may

address undesirable incentives that arbitrators on ad hoc arbitral tribunals are subject to (though as this paper has shown, these incentives are not, on the whole, an important driver of ICSID arbitral decisions). Conversely, a standing tribunal may give greater room for arbitrators to bring their policy preferences to bear on disputes before them. As a result, the standing investment tribunal between the EU and Canada could have unintended results: it could empower the permanent arbitrators to make greater use of their policy preferences in difficult or novel cases. It could lead to a further loss of control by states as a result of the higher degree of delegation of decision-making authority to such a permanent tribunal, as compared to ad hoc arbitral tribunals.

CETA also formally incorporate a Code of Conduct for Arbitrators (Annex 29-B(3)). The code explicitly set out requirements for experience and independence, as well as disclosure of all interests on matters likely to affect the arbitrator's independence Article 8.30 CETA provides that Members of the Tribunals cannot participate in deciding disputes involving a "direct or indirect conflict of interest". Crucially, upon appointment, they shall refrain from "acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement."[13]

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Table 1. Summary Statistics of ISCID Cases

	study sample	larger sample
number of cases	231	354
number of cases after 2000	187	294
GDP per capita of host countries (in PPP)	8256	8377
	(6921)	(6934)
GDP per capita of investor countries (in PPP)	30413	31211
	(11613)	(12008)
Property Protection Index of host countries	42.3	40.9
(from 0 to 100, larger number better protection)	(16.9)	(18.1)
Corruption Perceptions Index of host countries	3.42	3.98
(from 1 to 10, larger number lower corruption)	(2.39)	(6.19)
Manufactoring industry	32	55
Services industry	59	79
Mining/natural resources	80	140
Legalorigin of host countries (Common Law)	33	52
Legal origin of host countries (French)	150	219

Table 2. Summary Statistics of Personnel Information

arbitrators	president	claimant	respondent
number of observations	231	223	223
number of arbitrators	101	129	128
Policy preferences			
developing status	0.21	0.15	0.38
	(0.41)	(0.36)	(0.49)
public international law	0.35	0.21	0.45
	(0.48)	(0.41)	(0.50)
public lawyer	0.15	0.05	0.28
	(0.36)	(0.23)	(0.45)
government executive branch	0.43	0.35	0.33
	(0.50)	(0.48)	(0.47)
corporation experience	0.16	0.15	0.11
	(0.37)	(0.36)	(0.31)
Incentive factors			
investment counsel	0.53	0.72	0.48
	(0.50)	(0.45)	(0.50)
private practice	0.63	0.85	0.60
	(0.48)	(0.36)	(0.49)
academic	0.38	0.29	0.43
	(0.49)	(0.45)	(0.50)
Frequency of Appointment			
as presidents	6.64	3.30	2.03
	(5.44)	(4.71)	(3.42)
by claimant	3.62	5.99	1.69
	(4.70)	(5.98)	(3.79)
by respondent	2.31	1.38	7.34
	(5.76)	(2.11)	(12.50)
Other characteristics			
gender (female)	0.09	0.04	0.10
	(0.28)	(0.21)	(0.30)
higher education in OECD countries	0.91	0.95	0.89
	(0.28)	(0.22)	(0.32)
experience in international organizations (years)	1.21	0.52	1.18
	(4.41)	(2.39)	(3.61)
experience injudicial branch (years)	4.64	2.03	3.06
	(8.15)	(5.06)	(6.03)

Table 3. Effects of Personal Attributes on Decisions among Presiding Arbitrators, Probit Regression

VARIABLES	(1) Jurisdiction	(2) Liability	(3) Jurisdiction	(4) Liability	(5) Jurisdiction	(6) Liability	(7) Jurisdiction	(8) Liability
developing	-0.518*	-0.125	-0.622**	-0.175	-0.645**	-0.202	-0.883**	-0.181
	(0.282)	(0.313)	(0.291)	(0.323)	(0.309)	(0.352)	(0.399)	(0.447)
executive	-0.292	0.309	-0.250	0.359	-0.229	0.142	-0.013	0.354
	(0.219)	(0.246)	(0.236)	(0.277)	(0.239)	(0.317)	(0.337)	(0.422)
corporate	0.090	0.630*	-0.070	0.757*	-0.116	0.826**	-1.073**	0.152
	(0.329)	(0.364)	(0.356)	(0.389)	(0.360)	(0.417)	(0.542)	(0.595)
public international law	-0.002	-0.184	-0.174	-0.002	-0.182	-0.061	-0.188	-0.187
	(0.296)	(0.319)	(0.303)	(0.351)	(0.307)	(0.371)	(0.412)	(0.452)
public lawyer	-0.195	0.292	0.018	0.314	0.074	1.022*	-0.335	1.579**
	(0.335)	(0.417)	(0.345)	(0.456)	(0.437)	(0.580)	(0.591)	(0.690)
private practice	0.388	-0.663**	0.432*	-0.434	0.304	-0.832**	0.243	-1.526***
	(0.239)	(0.299)	(0.254)	(0.332)	(0.304)	(0.366)	(0.447)	(0.510)
investment counsel					0.100	-0.186	-0.013	0.068
					(0.330)	(0.371)	(0.471)	(0.430)
academic					-0.114	-0.846**	0.033	-1.861***
					(0.333)	(0.377)	(0.499)	(0.530)
#appointments as presides					-0.037	-0.069	-0.035	-0.148
(before current case)					(0.049)	(0.067)	(0.079)	(0.110)
#appointments by claimant					0.040	0.162**	0.267	0.073
(before current case)					(0.069)	(0.075)	(0.190)	(0.110)
#appointments by respondent					-0.036	-0.093	-0.168	-0.150
(before current case)					(0.073)	(0.089)	(0.115)	(0.100)
legal strength (jurisdiction)							0.932***	
							(0.161)	
legal strength (liability)								0.948***
								(0.216)
Observations	224	144	217	138	217	138	167	106
other personal characteristics	YES	YES	YES	YES	YES	YES	YES	YES
case characteristics	NO	NO	YES	YES	YES	YES	YES	YES
Pseudo R-squared	0.0625	0.0882	0.120	0.184	0.126	0.236	0.340	0.461

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 4. The Effects of Personal Attributes on Arbitral Decisions for Non-presiding Arbitrators

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sample	dissent cases		all arbitrators		claimant arbitrators		respondent arbitrators	
Variables	Jurisdiction	Liability	Jurisdiction	Liability	Jurisdiction	Liability	Jurisdiction	Liability
developing	-0.979**	-1.289**	-0.210	-0.137	2.553***	0.057	-0.444	-0.144
	(0.482)	(0.627)	(0.190)	(0.214)	(0.975)	(0.621)	(0.289)	(0.362)
executive	0.095	0.414	0.091	0.189	-0.043	0.108	-0.011	0.280
	(0.345)	(0.477)	(0.161)	(0.187)	(0.296)	(0.385)	(0.288)	(0.402)
corporate	-0.230	-0.730	-0.028	0.047	0.602	-0.639	0.132	0.262
	(0.518)	(0.808)	(0.227)	(0.257)	(0.465)	(0.738)	(0.394)	(0.571)
public international law	-1.008**	-0.552	-0.117	0.093	0.123	0.405	0.163	0.244
	(0.395)	(0.716)	(0.204)	(0.235)	(0.390)	(0.449)	(0.385)	(0.493)
public lawyer	-0.412	-0.105	-0.130	0.314	1.705*	-0.912	-0.505	0.199
	(0.592)	(0.994)	(0.263)	(0.327)	(1.030)	(0.682)	(0.451)	(0.604)
private practice	1.246***	0.618	0.497**	0.107	1.600**	-0.307	0.768**	1.335***
	(0.434)	(0.594)	(0.220)	(0.229)	(0.710)	(0.523)	(0.318)	(0.398)
investment counsel	-0.356	-0.671	-0.207	-0.128	-0.543	0.389	-0.583*	-1.007***
	(0.395)	(0.604)	(0.193)	(0.206)	(0.487)	(0.407)	(0.314)	(0.335)
academic	0.614	0.513	0.182	-0.106	0.467	0.550	0.226	-0.146
	(0.506)	(0.626)	(0.199)	(0.217)	(0.443)	(0.440)	(0.345)	(0.432)
#appointments as presides	0.045	-0.142	0.020	-0.012	-0.036	0.066	-0.049	-0.035
(before current case)	(0.074)	(0.098)	(0.045)	(0.055)	(0.087)	(0.144)	(0.104)	(0.126)
#appointments by claimant	0.059	-0.009	0.031	0.011	-0.018	0.042	0.057	0.009
(before current case)	(0.081)	(0.107)	(0.057)	(0.064)	(0.080)	(0.097)	(0.112)	(0.143)
#appointments by respondent	-0.053	-0.178*	-0.042	-0.069	0.516	-0.565	-0.009	-0.028
(before current case)	(0.070)	(0.097)	(0.045)	(0.052)	(0.347)	(0.384)	(0.053)	(0.071)
jurisdiction_strength	0.202		0.468***		0.327**		0.548***	
	(0.182)		(0.076)		(0.145)		(0.146)	
liable_strength		0.841**		0.578***		0.796***		0.537***
		(0.348)		(0.098)		(0.205)		(0.186)
Observations	109	68	477	302	149	92	155	96
other personal characteristics	YES	YES	YES	YES	YES	YES	YES	YES
case characteristics	YES	YES	YES	YES	YES	YES	YES	YES
Pseudo R-squared	0.269	0.272	0.173	0.205	0.292	0.308	0.269	0.311

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 5. Effects of Personal Attributes on Decisions among Presiding Arbitrators by Appointment Modality

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sample	ICSID-appointed Presiding Arbitrators				Party-agreed Presiding Arbitrators			
Variables	Jurisdiction		Liability		Jurisdiction		Liability	
developing	-0.387**	-0.238	-0.473**	-0.504**	0.011	-0.062	0.192	0.031
	(0.190)	(0.211)	(0.220)	(0.209)	(0.126)	(0.144)	(0.274)	(0.269)
executive	-0.016	0.053	0.458***	0.495***	-0.083	-0.033	-0.019	-0.225
	(0.111)	(0.097)	(0.161)	(0.166)	(0.106)	(0.108)	(0.221)	(0.243)
corporate	0.102	-0.239	0.547**	0.689***	-0.046	-0.165	0.043	-0.188
	(0.134)	(0.211)	(0.205)	(0.170)	(0.089)	(0.136)	(0.260)	(0.356)
public international law	0.071	0.039	0.053	0.091	-0.516***	-0.340*	0.068	0.193
	(0.107)	(0.120)	(0.137)	(0.133)	(0.170)	(0.186)	(0.232)	(0.286)
public lawyer	-0.130	-0.145	-0.031	-0.074	0.238	0.077	0.169	0.316
	(0.184)	(0.157)	(0.254)	(0.229)	(0.274)	(0.315)	(0.378)	(0.368)
private practice	0.204	0.146	-0.134	-0.258*	-0.051	-0.159	0.158	0.655
	(0.141)	(0.142)	(0.170)	(0.148)	(0.176)	(0.221)	(0.248)	(0.418)
investment counsel	-0.040	0.007	-0.240	-0.046	-0.157	-0.019	-0.292	-0.380
	(0.156)	(0.133)	(0.160)	(0.167)	(0.151)	(0.151)	(0.215)	(0.260)
academic	0.114	0.094	0.230	0.122	-0.218	-0.290	-0.249	-0.244
	(0.171)	(0.151)	(0.270)	(0.296)	(0.148)	(0.188)	(0.274)	(0.417)
#appointments as presides	-0.004	0.028	-0.133**	-0.145***	-0.021	-0.008	0.050	0.071
(before current case)	(0.025)	(0.023)	(0.048)	(0.042)	(0.024)	(0.024)	(0.045)	(0.042)
#appointments by claimant	0.009	-0.015	-0.089	-0.015	0.041	0.044	0.006	-0.094
(before current case)	(0.049)	(0.051)	(0.073)	(0.065)	(0.028)	(0.038)	(0.066)	(0.063)
#appointments by respondent	-0.116**	-0.153***	0.366*	0.367**	0.001	-0.016	-0.056	-0.058
(before current case)	(0.054)	(0.046)	(0.193)	(0.168)	(0.025)	(0.029)	(0.044)	(0.048)
jurisdiction_strength		0.169**				0.127*		
		(0.066)				(0.070)		
liable_strength				0.067				0.291**
				(0.062)				(0.103)
Observations	88	74	49	44	90	71	62	46
R-squared	0.336	0.490	0.758	0.847	0.318	0.449	0.410	0.741
other personal characteristics	YES	YES	YES	YES	YES	YES	YES	YES
case characteristics	YES	YES	YES	YES	YES	YES	YES	YES

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 6. Selection of Arbitrator Personal Attributes by Disputing Parties

variables	(1) #appointments by claimant	(2) #appointments by respondent	(3) dummy of appointment by claimant
developing	-2.994***	0.265	-0.444***
	(0.711)	(0.908)	(0.079)
executive	3.837***	-1.761**	0.113
	(0.669)	(0.843)	(0.083)
corporate	-1.327*	-3.135**	0.075
	(0.729)	(1.338)	(0.108)
public international law	-0.419	2.772***	-0.129
	(0.890)	(0.926)	(0.090)
public lawyer	-3.591***	8.414***	-0.423***
	(1.048)	(1.596)	(0.129)
private practice	0.456	-1.326	0.149
	(0.633)	(0.981)	(0.106)
investment counsel	2.577***	-0.831	0.075
	(0.656)	(0.942)	(0.094)
academic	-0.815	-4.146***	0.042
	(0.625)	(1.091)	(0.100)
gender	-0.756	22.615***	-0.245**
	(1.027)	(2.901)	(0.118)
education in OECD countries	2.518***	0.072	0.294**
	(0.844)	(1.311)	(0.126)
judicial experience	-0.014	-0.050	-0.008
	(0.044)	(0.060)	(0.007)
experience in international organization	-0.120	-0.138	-0.012
	(0.089)	(0.089)	(0.011)
Observations	665	665	665
R-squared	0.624	0.798	0.359
control for case characteristics	NO	NO	case fixed effect

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 7. The Effects of Aggregated Bias Factors on Arbitral Decisions
Panel A. Dependent variable: Jurisdiction

prediction based on	(1) all personal attributes	(2)	(3) selection factors	(4)	(5) policy preferences	(6)	(7) no developing	(8)
predicted appointment as claimant arbitrators	0.028 (0.044)	0.140** (0.061)	0.070* (0.040)	0.162*** (0.059)	0.043 (0.043)	0.091 (0.064)	0.003 (0.047)	-0.049 (0.070)
legal strength (jurisdiction)	0.657*** (0.145)	0.854*** (0.263)	0.624*** (0.144)	0.704*** (0.227)	0.615*** (0.140)	0.669*** (0.210)	0.612*** (0.140)	0.664*** (0.208)
Observations	167	74	170	76	169	76	169	76
case characteristics	YES	YES	YES	YES	YES	YES	YES	YES
appointment history	YES	YES	YES	YES	YES	YES	YES	YES
sample	presidents		presidents		presidents		presidents	
	all	ICSID	all	ICSID	all	ICSID	all	ICSID
Pseudo R-squared	0.234	0.459	0.230	0.413	0.223	0.376	0.217	0.364

Panel B. Dependent variable: Liability

prediction based on	(1) all personal attributes	(2)	(3) selection factors	(4)	(5) policy preferences	(6)	(7) no developing	(8)
predicted appointment as claimant arbitrators	0.028 (0.043)	0.394*** (0.136)	-0.006 (0.049)	0.109 (0.098)	0.005 (0.053)	0.390*** (0.139)	-0.014 (0.063)	0.076 (0.093)
legal strength (liability)	0.746*** (0.194)	1.269*** (0.480)	0.761*** (0.194)	0.726** (0.324)	0.763*** (0.192)	1.192*** (0.360)	0.758*** (0.190)	0.731** (0.303)
Observations	106	44	107	45	107	45	107	45
case characteristics	YES	YES	YES	YES	YES	YES	YES	YES
appointment history	YES	YES	YES	YES	YES	YES	YES	YES
sample	presidents		presidents		presidents		presidents	
	all	ICSID	all	ICSID	all	ICSID	all	ICSID
Pseudo R-squared	0.297	0.493	0.299	0.329	0.299	0.426	0.299	0.312

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 8. Panel Effects of Personal Characteristics on Decision Outcomes

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sample	all cases				president appointed by ICSID			
Variables	Jurisdiction		Liability		Jurisdiction		Liability	
developing	-0.066	-0.047	0.018	0.026	-0.189**	0.003	0.040	-0.032
	(0.045)	(0.047)	(0.070)	(0.065)	(0.095)	(0.101)	(0.133)	(0.171)
executive	0.025	0.043	0.065	0.057	0.081	0.083	0.214**	0.171
	(0.040)	(0.050)	(0.065)	(0.071)	(0.075)	(0.077)	(0.097)	(0.101)
corporate	-0.033	-0.058	0.029	-0.016	-0.090	-0.120	0.021	-0.015
	(0.049)	(0.053)	(0.078)	(0.079)	(0.096)	(0.104)	(0.181)	(0.200)
public international law	0.040	0.032	0.074	0.141	0.092	0.016	-0.127	0.031
	(0.060)	(0.067)	(0.084)	(0.097)	(0.116)	(0.115)	(0.165)	(0.220)
public lawyer	0.012	-0.077	-0.030	0.015	-0.017	-0.110	-0.056	-0.088
	(0.072)	(0.074)	(0.118)	(0.124)	(0.127)	(0.131)	(0.301)	(0.262)
private practice	0.077	0.065	0.033	0.027	0.158*	0.112	-0.101	-0.105
	(0.048)	(0.051)	(0.063)	(0.064)	(0.087)	(0.093)	(0.128)	(0.170)
investment counsel	-0.033	-0.019	-0.019	0.044	-0.111*	-0.030	-0.047	0.022
	(0.039)	(0.038)	(0.061)	(0.065)	(0.062)	(0.072)	(0.111)	(0.167)
academic	-0.007	0.024	0.020	0.005	0.021	0.072	0.172	0.102
	(0.044)	(0.042)	(0.074)	(0.068)	(0.083)	(0.092)	(0.156)	(0.154)
#appointments as presides	0.002	0.004	0.004	0.006	-0.013	0.018	-0.003	-0.029
(before current case)	(0.008)	(0.008)	(0.012)	(0.013)	(0.016)	(0.023)	(0.038)	(0.037)
#appointments by claimant	-0.000	-0.000	0.023	0.015	0.010	0.030	-0.016	-0.032
(before current case)	(0.009)	(0.011)	(0.015)	(0.018)	(0.024)	(0.034)	(0.040)	(0.057)
#appointments by responden	-0.012	0.007	-0.006	-0.003	-0.039**	-0.053	0.028	0.048
(before current case)	(0.009)	(0.009)	(0.012)	(0.015)	(0.019)	(0.037)	(0.039)	(0.055)
legal strength (jurisdiction)		0.153***				0.145***		
		(0.035)				(0.053)		
legal strength (liability)				0.208***				0.108
				(0.046)				(0.129)
Observations	224	170	142	107	92	76	50	45
R-squared	0.105	0.248	0.211	0.415	0.261	0.374	0.523	0.561
case characteristics	YES	YES	YES	YES	YES	YES	YES	YES
other peronal characteristics	YES	YES	YES	YES	YES	YES	YES	YES

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1