Does an Arbitrator's Background Influence the Outcome of an Investor-State Arbitration?

Rodrigo Polanco Lazo
World Trade Institute (WTI) – University of Bern
University of Luzern
Rodrigo.Polanco@wti.org

Valentino Desilvestro
World Trade Institute (WTI) – University of Bern
Valentino.Desilvestro@wti.org

Abstract

The goal of this article is to determine whether the background of an arbitrator could be considered as a determinant of case-outcomes in investor-state dispute settlement (ISDS). Using the existing literature on arbitrators' bias and experience as a starting point, this study analyses several characteristics of arbitrators as part of their "background", grouping them into two basic categories: ISDS experience (related to their previous involvement as arbitrator or member of an annulment committee in investor-state arbitration), and personal characteristics (including age, gender, language, nationality, background legal studies and professional background). Our research concludes that, with some exceptions, generally there does not seem to be a decisive influence between the arbitrator's ISDS experience or personal characteristics in the outcome of an investor-state arbitration case.

Keywords

1   Introduction[1]

Investor-state dispute settlement (ISDS) has been the subject of an enormous amount of criticism in recent years, particularly under its most traditional form, investor-state arbitration. Although the concerns about ISDS are largely documented in abundant literature, this research will focus on one specific issue that has been mentioned as troublesome: the supposed lack of impartiality of arbitrators, which would stem from the fact that arbitrators are generally appointed by the parties, and have an economic interest in being reappointed or at least a cognitive disposition to favour the appointing party.[2]

As one possible proxy to determine an arbitrator's bias in investor-state arbitration, this research examines whether the arbitrator's background could be considered as a determinant of case-outcomes in ISDS. Using the existing literature on arbitrators' bias and experience as a starting point, this paper analyses several characteristics of arbitrators as part of their "background", grouping them into two basic categories: ISDS experience and personal characteristics. On ISDS experience, we examined the previous involvement of arbitrators or members of annulment committees in investor-state arbitration – including the number of times that a person has served in any of these capacities and whether the appointments have been made by the claimant, the respondent state or by a third party (*e.g.* appointing authorities) – and crossed that information with ISDS outcomes, studying if decisions are taken unanimously or split with dissenting opinions. Regarding personal characteristics, we collected a number of factors, including age, gender, language, nationality, background legal studies (common law, civil law and others) and professional background (academia, judiciary, practitioner, in-house counsel and others), and then we compared that information with the outcome of ISDS cases. Considering the above-mentioned variables, the article aims to answer the following questions: Is the gender or age of arbitrators influential in their decisions? Does the country of origin's income group of an arbitrator, or his or her nationality, affect the outcome of an arbitration? Is there any connection between an arbitrator's legal or professional background and her/his awards? Is previous experience as an arbitrator indicative of future outcomes?

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2   Sergio Puig and Anton Strezhnev, "Affiliation Bias in Arbitration: An Experimental Approach" (Social Science Research Network, 2016), SSRN Scholarly Paper ID 2830241, <https://papers.ssrn.com/abstract=2830241>, accessed 25 October 2017.

This article is divided into five sections. After the introduction, the second part contextualizes our research with a review of the existing literature. The third part describes the dataset used for this article and our methodology to both collect and analyse the data. The fourth part provides information on arbitrators' ISDS experience and personal background, based on the data and the methodology described, and the article closes with a brief conclusion.

2   Literature Review

The literature on arbitrators' bias and experience has grown in recent years, involving the work of lawyers, economists and political scientists. Several of these studies highlight the difficulties and limitations of empirical analysis in the field, based on the lack of complete information (*e.g.*, not all ISDS decisions nor arbitrators' personal information are publicly available), and the fact that there are other factors that can play an important role in the decision of a specific dispute, like the applicable law, the arbitral rules, and the evidence produced during litigation, among others. These limitations are also valid for our research.

In a seminal work published already a decade ago, Franck (2007) explored several areas of investment-treaty arbitration and, in particular, the nationality and gender of arbitrators based on a population of 102 awards from 82 cases, with the purpose of setting the stage for future research, and to provide insights to government officials in negotiating investment treaties and to parties planning their dispute resolution strategies.[3] In a subsequent study, Franck (2009) analysed outcomes as a function of respondent and presiding arbitrator development status, claiming that, at the macro level, development status does not have a statistically significant relationship with outcome. She raised the existence of two statistically significant simple effects: first, that tribunals with presiding arbitrators from the developing world made smaller awards against developed states in particular circumstances; and, second, that considering the World Bank (WB) classifications for development status, the large majority of presiding arbitrators generating final awards were from high income states, with a lower number for upper-middle and lower-middle income states, and with no presiding arbitrators from low income states.[4]

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3   Susan D. Franck, "Empirically Evaluating Claims about Investment Treaty Arbitration", 86 *North Carolina Law Review* (2007), 1.

4   Susan D. Franck, "Development and Outcomes of Investment Treaty Arbitration", 50 *Harvard International Law Journal* (2009), 435.

Several subsequent studies complemented or contested Franck's conclusions. In a study of 131 ICSID cases, Kapeliuk (2010) found that there is indeed a group of selected arbitrators who serve repeatedly on investment tribunals. Yet, the study did not find differences in decision-making on outcomes by "elite" as opposed to other arbitrators, or that they had a tendency to rule in favour of the investors. She claimed that repeat arbitrators display no biases and no tendencies to "split the difference". In fact, Kapeliuk's study shows that repeat presiding arbitrators are less averse to extreme outcomes than are party-appointed arbitrators. Her research also shows that the arbitrators' decision, examined individually, do not always display a balanced decision pattern over time. Finally, she concluded that the arbitrators' incentive to maintain their reputations as experienced and unbiased experts may lead them to grant an award uninfluenced by the need to satisfy any of the parties.[5]

Although they do not provide new information about arbitrators, Gallagher and Shrestha (2011), using a dataset of 105 investment treaty cases, recommended caution when relying on Franck's work to argue that investor-state arbitration is neutral toward developing countries. They presented as limitations of her analysis the lack of adequate sample composition and size, and found that developing countries were disproportionately subjected to claims in raw terms and relative to their share of global investment flows and that claims and awards toward developing countries are financially more significant.[6] The same year, a study by Fontoura Costa (2011), collecting information on 273 individuals who served as arbitrators under the International Centre for Settlement of Investment Disputes (ICSID) rules, concluded that a small number of arbitrators amongst these individuals accounted for about a quarter of all nominations.[7] Giorgetti (2014) briefly addressed lack of diversity among arbitrators. In that context, she declared that moving away from party-appointed arbitrators is unwarranted and unwise, and would too radically transform international investment arbitration. In lieu, her proposal was the adoption of stricter arbitrator challenge rules and enlarging the pool of arbitrators.[8] Yet,

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5   Daphna Kapeliuk, "The Repeat Appointment Factor: Exploring Decision Patterns of Elite Investment Arbitrators", 96 *Cornell Law Review* (2010), 47.

6   Kevin P. Gallagher and Elen Shrestha, "Investment Treaty Arbitration and Developing Countries: A Re-Appraisal" [2011] Global Development and Environment Institute. Working Paper No. 11–01, <http://ase.tufts.edu/gdae/Pubs/wp/11-01TreatyArbitrationReappraisal.pdf>, accessed 14 August 2017.

7   Jose Augusto Fontoura Costa, "Comparing WTO Panelists and ICSID Arbitrators: The Creation of International Legal Fields", 1 *Oñati Socio-Legal Series* (2011), 1.

8   Chiara Giorgetti, "Who Decides Who Decides in International Investment Arbitration?", 35 *University of Pennsylvania Journal of International Law* (2014), 431.

she did not provide new information about arbitrators, as the data used only referred to previous research.

Using a systematic content analysis of 140 awards dealing with jurisdictional matters, Van Harten (2012) aimed to test hypotheses of systemic bias in the resolution of jurisdictional issues in investment treaty arbitration. After examining trends in legal interpretation instead of case-outcomes, he discussed decisions based on total appointments per arbitrator, concluding that there is tentative support for expectations of systemic bias arising from the interests of arbitrators in light of the asymmetrical claims structure and the absence of conventional markers of judicial independence.[9] Similarly, but in a broader context, Brekoulakis (2013) examined arbitral decision-making and held that the legal concept of bias in arbitration needs revisiting to include not only apparent bias associated with individual arbitrators, but also implicit and systemic bias. In his view, existing empirical studies on arbitral decision-making, although they provide useful insight in arbitral behaviour, depart from the assumption that arbitral decision-making is driven almost exclusively by extra-legal factors, such as the personal traits, policy preferences or financial incentives of individual arbitrators. He finally offers an alternative model for this analysis, taking into account the influence of the broader institutional context within which arbitrators are embedded.[10]

An even more critical analysis against ISDS arbitrators is made by Eberhardt and Olivet (2012), based on 247 cases collected from open public databases on ISDS. They affirmed that the international investment arbitration industry is dominated by a small and tight-knit Northern hemisphere-based community of elite arbitrators, and claimed that this group tends to defend private investor rights above public interest, with an inherent pro-corporate bias.[11]

Puig (2014) relied on all appointments made in proceedings under ICSID (1972–2014), as well as interviews, using network analytics. He concluded that arbitrators who have been appointed more frequently are more likely to attract further appointments. In that context, Puig identified a core of around 25 arbitrators or "power brokers", most of them grand old men from Europe and

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9   Gus Van Harten, "Arbitrator Behaviour in Asymmetrical Adjudication: An Empirical Study of Investment Treaty Arbitration", 50 *Osgoode Hall Law Journal* (2012), 211.

10 Stavros Brekoulakis, "Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making", 4 *Journal of International Dispute Settlement* (2013), 553.

11 Pia Eberhardt and Cecilia Olivet, *Profiting from Injustice. How Law Firms, Arbitrators and Financiers Are Fuelling an Investment Arbitration Boom* (Corporate Europe Observatory (CEO) and the Transnational Institute (TNI), 2012), <http://www.tni.org/sites/www.tni .org/files/download/profitingfrominjustice.pdf>, accessed 5 August 2017.

North America that continue to "dominate the arbitration profession", with the exception of two "formidable women".[12]

Using a sample of 548 individuals who attended the biennial Congress of the International Council for Commercial Arbitration (ICCA) in 2014, and completing a detailed survey, Franck *et al.* (2014) concluded that the average international arbitrator (of the author's dataset which includes not only ISDS arbitrators) is a fifty-three-year-old man who is a national of a developed state, with an average of ten arbitral appointments. 17.6% of the arbitrators in the dataset were women. There was a significant age difference such that male arbitrators were approximately ten years older than female arbitrators. The data supported, rather than disproved, claims that international arbitration is a relatively homogenous group.[13] In a companion article published some years later, the same researchers concluded that arbitrators, whether appointed by the state or by the parties, in their decision-making are just like judges, and thus are fallible and influenced by anchoring, framing, representativeness, and egocentric bias.[14]

Based on the analysis of 261 ICSID arbitrations between 1972 and April 2015 (of which 180 were decided, excluding annulment proceedings), Strezhnev (2016) concluded that when tribunal presidents were nationals of advanced economies and had worked in government, claimants' win probabilities increased significantly (about 25%) as opposed to when tribunal presidents were purely in private law practice or academia.[15]

Most recent studies expand the conclusions of empirical analyses about arbitrators' bias and experience, with the advantage of having at hand a larger number of decided ISDS cases in comparison with previous studies. After examining 739 cases available at UNCTAD's ISDS database at the end of 2016 (of which 471 had been decided), Donaubauer *et al.* (2017) concluded that the nature of involvement of arbitrators in previous ISDS cases matters for the particular case under dispute. Pro-investor bias – defined as the number of times arbitrators have previously represented an investor in ISDS cases minus the number of times they have represented a respondent state in such cases – raises the likelihood that an investor will win an ISDS case. Yet, independently

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12   Sergio Puig, "Social Capital in the Arbitration Market", 25 *European Journal of International Law* (2014), 387.

13   Susan D. Franck *et al.*, "The Diversity Challenge: Exploring the Invisible College of International Arbitration", 53 *Colum. J. Transnat'l L.* (2014), 429.

14   Susan D. Franck *et al.*, "Inside The Arbitrator's Mind", 66 *Emory Law Journal* (2017), 1115.

15   Anton Strezhnev, "Are Investment Arbitrators Biased?", [2016] *Working Paper* 23, <https://static1.squarespace.com/static/5931baca440243906ef65ca3/t/5966ed6be58c6243347ac6e1/1499917675752/are_investment_arbitrators_biased.pdf>, accessed 25 October 2017.

of bias, more experienced claimant-appointed arbitrators help investors win their case.[16] Using the same dataset, one of the co-authors of the previous research goes further in assessing bias of arbitrators, finding no compelling justification to blame biased arbitrators for any ISDS legitimacy crisis.[17] Using a dataset of 500 arbitrators appointed in ICSID cases, Waibel and Yu (2017) found that tribunal decisions are weakly correlated with an external measure of legal strength but strongly correlated with arbitrators' policy preferences. When the presiding arbitrator's preferences are closer to those of the arbitrators that one party frequently appoints, the tribunal decisions are biased toward that party. They find that among the "bias" factors, the arbitrator's developing status is the most prominent.[18]

In the most recent research reviewed for this article, and relying on the new PluriCourts Investment Treaty Arbitration Database (PITAD) that includes 1,039 investment arbitration cases (including ICSID annulments), Langford *et al.* (2017) offer a social network analysis to describe the full investment arbitration community, including the relationships between the 3,910 known individuals that form it (arbitrators, legal counsel, expert witnesses and secretaries). With respect to arbitrators, a mapping was partly done by a simple count of the number of cases and an identification of certain attributes pertaining to them, such as nationality, gender, legal role, and/or institutional role.[19]

3   Methodology Applied

Our study differs from the existing literature on arbitrators' bias and experience, both with respect to the factors analysed and the dataset that was used. With regard to the background of arbitrators, several issues addressed here

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16   Julian Donaubauer, Eric Neumayer and Peter Nunnenkamp, *Winning or Losing in Investor-to-State Dispute Resolution: The Role of Arbitrator Bias and Experience* (Kiel: Kiel Institute for the World Economy (IfW), 2017).

17   Peter Nunnenkamp, "Biased Arbitrators and Tribunal Decisions Against Developing Countries: Stylized Facts on Investor-State Dispute Settlement", 29 *Journal of International Development* (2017), 851.

18   Michael Waibel and Yanhui Wu, "Are Arbitrators Political? Evidence from International Investment Arbitration", <http://www-bcf.usc.edu/~yanhuiwu/arbitrator.pdf>, accessed 16 August 2017.

19   Malcolm Langford, Daniel Behn and Runar Hilleren Lie, "The Revolving Door in International Investment Arbitration", 20 *Journal of International Economic Law* (2017), 301.

have been addressed before (*e.g.* ISDS experience), however in this article we have tried to cross that information with ISDS outcomes, thus studying whether decisions are taken unanimously or whether they are split with dissenting opinions. At the same time, we have added the analysis of several personal factors of arbitrators that are external to the process (age, gender, nationality, country's income group, background legal studies and professional background) and then we compared that information with the outcome of the ISDS cases. Regarding the dataset, as with other recent studies, we benefited from the larger number of decided ISDS cases that are publicly available, as well as from the measures of transparency that have also made personal information from arbitrators accessible online.

3.1   *Factors Analysed*

As mentioned above, we examined several characteristics of the arbitrators as part of their "background", grouping them into two basic categories: ISDS experience and personal characteristics.

Regarding ISDS experience, we examined the previous involvement of arbitrators or members of annulment committees in investor-state arbitration, including the number of times that a person has served in any of these capacities, whether the appointments have been made by the claimant, the respondent state or by a third party (*e.g.* appointing authorities), the number of times a case has been won by a foreign investor or a state when the arbitrator was part of the tribunal, and the cases where these arbitrators have issued minority dissenting decisions.

With respect to personal characteristics, we collected a number of factors from open sources including:

– **Gender**: female or male.
– **Age**: based on date of birth and, if applicable, date of death.
– **Nationality**: also adding income status according to the WB classification.[20]
– **Language**: based on mother tongue of arbitrators. We excluded other languages mentioned in the professional CVs of arbitrators as it was not always possible to corroborate their level of proficiency on a second language.
– **Professional background**: here we mapped several categories regardless if the job is full or part-time, which included:
  – *Academia*: professor, lecturer, reader, researcher, etc.

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20   The World Bank, "World Bank Country and Lending Groups" (World Bank Data Help Desk, 2017), <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>, accessed 15 September 2017.

  – *Private practice*: job in a law firm, or individual practice.
  – *Civil society*: work in non-governmental organizations, professional associations (*e.g.*, bar associations).
  – *International Organizations*: official appointments (*e.g.* WB, International Law Commission).
  – *Judiciary*: distinguishing between domestic and international judiciary.
    – <u>Domestic judiciary</u> includes work as a judge, member of a court of appeals or supreme court.
    – <u>International judiciary</u> includes work in international tribunals (*e.g.*, the International Court of Justice (ICJ). Regional tribunals like the Court of Justice of the European Union (CJEU) were also included in this category, as well as quasi-jurisdictional bodies like the World Trade Organization (WTO) Appellate Body and Panels.
  – *Corporate*: in-house counsel of a corporation, director of legal affairs/ legal services, board members, were included in this category.
– **Background legal studies**: University studies undertaken by arbitrators, using University of Ottawa's JuriGlobe classification[21] that includes: civil law, common law, Muslim law, customary law, mixed (including any of the previous categories). We counted one mention for each academic degree.

3.2   *Dataset*

With respect to ISDS experience, the data was collected from two main sources: the UNCTAD ISDS database, which as of September 2017 included information on 817 investor-state arbitration cases (528 of them concluded),[22] and the ICSID's searchable database of arbitrators, conciliators and *ad hoc* Committee members, which by the same date included all arbitrators, conciliators and Committee members who have served or are serving in ICSID cases and all current designees to the Panels of Arbitrators and of Conciliators.[23] The total number of arbitrators examined was 541.

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21   University of Ottawa, "Alphabetical Index of the 192 United Nations Member States and Corresponding Legal Systems" (JuriGlobe – World Legal Systems, 2017), <http://www.juri globe.ca/eng/syst-onu/index-alpha.php>, accessed 15 September 2017.

22   United Nations Conference on Trade and Development (UNCTAD), "Investment Dispute Settlement Navigator" (Investment Policy Hub, September 2017), <http://investmentpoli cyhub.unctad.org/ISDS>, accessed 15 September 2017.

23   International Centre for Settlement of Investment Disputes (ICSID), "Arbitrators, Conciliators and Ad Hoc Committee Members" (2017), <https://icsid.worldbank.org/en/ Pages/arbitrators/CVSearch.aspx>, accessed 15 September 2017.

Regarding personal factors, we also used as a starting point the ICSID database, which contains the *curricula vitae* of persons who have chosen to include their details (*e.g.* nationality, language and gender). Other personal information was collected from websites dedicated to ISDS,[24] and information found on the internet from open sources. The information was double-coded by the authors of the article, with the help of three research assistants.[25]

4   Who Are ISDS Arbitrators?

4.1   *Previous ISDS Experience*
The information extracted from our dataset ratifies what was concluded on the basis of previous research: The top 25 arbitrators comprise a group that accounts for 4.62% of all investment arbitrators appointed in our sample (541 in total), but who are represented in just over a third (34.89%) of all arbitral appointments (873 of 2502). This elite is integrated by two women and twenty-three men, largely from high-income countries, from the Western hemisphere.

Previous experience in ISDS arbitration is heavily concentrated in this elite group, as the more appointed arbitrators tend to be appointed more often. While the top 25 arbitrators have all had more than 22 appointments, in contrast, 267 arbitrators of our dataset (around 50% of the whole group of ISDS arbitrators) are registered as having only one appointment in the system. At the same time, arbitrators with just two appointments number only 65 (12% of the dataset), whereas those with three appointments number 31 (around 6%), and those with four appointments number 20 (around 4%).

4.2   *Gender*
There is an important gender gap in ISDS arbitration. The overwhelming majority of arbitrators are male (90%), with only 10% of arbitrators being female (50 women in total), and within that group are included two remarkable women who represent the large majority of female appointments (Professors Brigitte Stern and Gabrielle Kaufmann-Kohler, who both also figure prominently in the elite group of top 25 ISDS arbitrators).

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24   "Investment Arbitration Reporter", <https://www.iareporter.com/>, accessed 15 September 2017.
25   Sisi Tang, Jorge Manrique de Lara Seminario and Fuji Anrina, whom we thank for their time devoted to this research.

TABLE 1   Arbitrators, Top 25

Rank	Name	N	Gender	Nat	Income group	Pres	Resp	Claim
1	Stern, B.	88	F	FRA	High income	3	80	1
2	Fortier, L.Y.	51	M	CAN	High income	22	1	26
3	Kaufmann-Kohler, G.	50	F	CHE	High income	32	3	14
4	Orrego Vicuña, F.	47	M	CHL	High income	17	4	25
5	Brower, C.N.	45	M	USA	High income	1	0	42
6	Thomas, J.C.	38	M	CAN	High income	0	37	1
6	van den Berg, A.J.	38	M	NLD	High income	16	8	13
8	Böckstiegel, K.-H.	36	M	DEU	High income	22	1	7
8	Hanotiau, B.	36	M	BEL	High income	12	4	14
10	Alexandrov, S.A.	35	M	BGR	Upper middle income	3	1	28
11	Bernardini, P.	34	M	ITA	High income	10	4	12
11	Lalonde, M.	34	M	CAN	High income	8	4	19
13	Cremades, B.M.	33	M	ESP	High income	13	10	9
13	Oreamuno Blanco, R.	33	M	CRI	Upper middle income	10	16	0
15	Veeder, V.V.	32	M	GBR	High income	22	5	5
16	Sands, P.	29	M	FRA, GBR	High income	1	24	2
17	Fernández-Armesto, J.	26	M	ESP	High income	20	3	1
18	Landau, T.	25	M	GBR	High income	3	21	1
18	Lowe, V.	25	M	GBR	High income	12	10	1
18	Paulsson, J.	25	M	FRA, SWE	High income	10	4	10
21	Crawford, J.R.	23	M	AUS	High income	9	8	1
21	Dupuy, P.-M.	23	M	FRA	High income	7	15	1
21	Williams, D.A.R.	23	M	NZL	High income	8	0	14
24	Douglas, Z.	22	M	AUS	High income	1	19	1
24	Rigo Sureda, A.	22	M	ESP	High income	12	0	1

N indicates the total number of appointments, and includes appointments in Annulment Committees. Income group according to the World Bank development classification.

Pres, Resp and Claim refer to the number of appointments as president, by respondent and claimant, respectively.
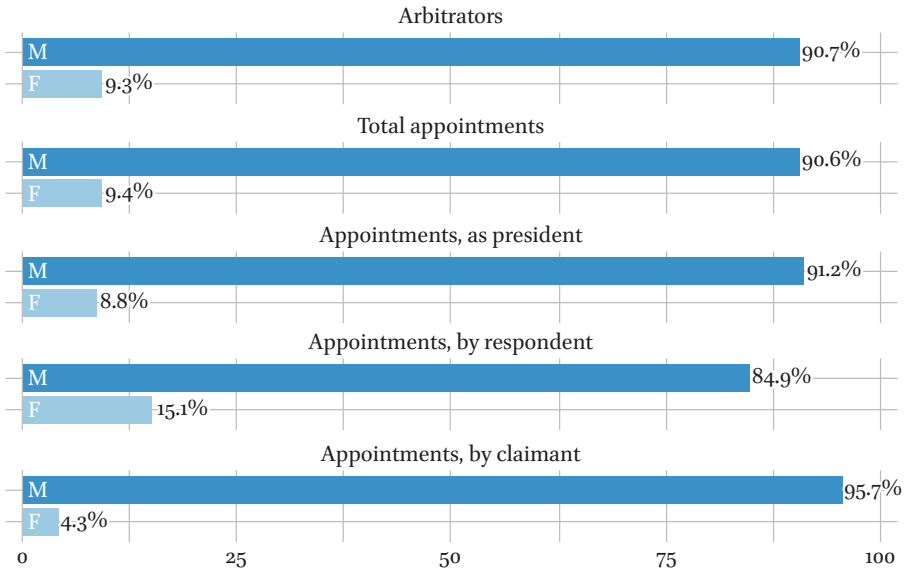
FIGURE 1   Arbitrators, by Gender

There seems to be no major difference with regard to this conclusion, whether we examine the appointments made by the claimant or those made by the respondent. Although in Figure 1 above it appears that appointments made by the respondent have a higher percentage of female appointments (15%), this is solely explained by the high number of Professor Stern's appointments by respondent states.

4.3   *Age*

Age seems to be a sensitive issue for the majority of ISDS arbitrators. It is often not displayed in their professional curricula, but with intensive research we managed to obtain the year of birth of 65% of the sample (353 arbitrators).

From that group, the average age of ISDS arbitrators is 70 years old (even if we exclude from the sample the 42 arbitrators deceased at the moment of writing), with some minor variations, for example, that the small group of female arbitrators is generally younger in comparison to predominant male arbitrators, as described in the table below. Obtaining the missing information from the remaining 35% is unlikely to change the average of seven decades, as other available information (*e.g.*, year of studies) allows us to infer an approximate age.

Figure 2 below describes the median year of birth of all arbitrators, distinguished by gender, party appointment and appointment as president.
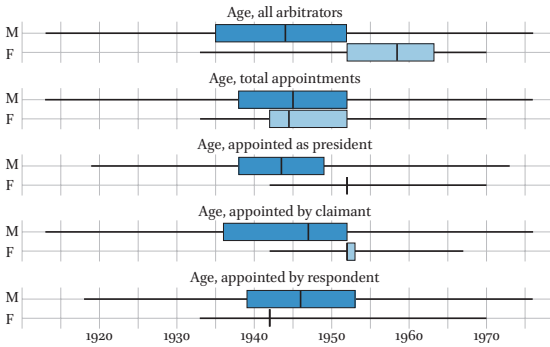

FIGURE 2   Arbitrators, by Age

4.4   *Nationality*

As we can observe from Figures 3 and 4, the large majority of ISDS arbitrators are nationals of the United States of America (USA) or of a selected group of eight Western European countries (Great Britain, France, Germany, Switzerland, Spain, Sweden, Italy and Belgium). Another important group have Canadian or Australian nationality. It is noteworthy that three Latin American countries have nationals who are frequently appointed (Mexico, Argentina and Chile – although the latter is mainly due to the appointments of Professor Francisco Orrego Vicuña). Finally, Bulgarian nationality is also relevant, but again mainly driven by the high number of appointments of Mr. Stanimir Alexandrov.

Minor variations are found depending on whether the appointment has been made by the claimant, by the respondent, or if the arbitrator is appointed as president, as detailed in the table below.

It is also interesting to note that only a minor number of arbitrators are also dual nationals (43 arbitrators, around 8% of the sample).

4.5   *Language*

As it can be seen in Figures 5 and 6, two languages seem to be particularly prevalent in the appointment of arbitrators: English and French. If we differentiate the type of appointments, the English language seems to be particularly relevant for appointments by claimants, while for appointments by respondents and for appointments as president both languages have an even distribution.
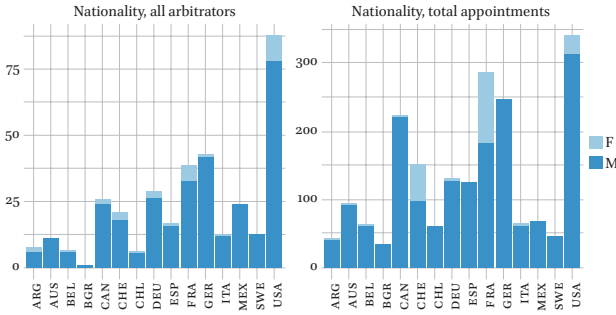
FIGURE 3   Arbitrators, by Nationality
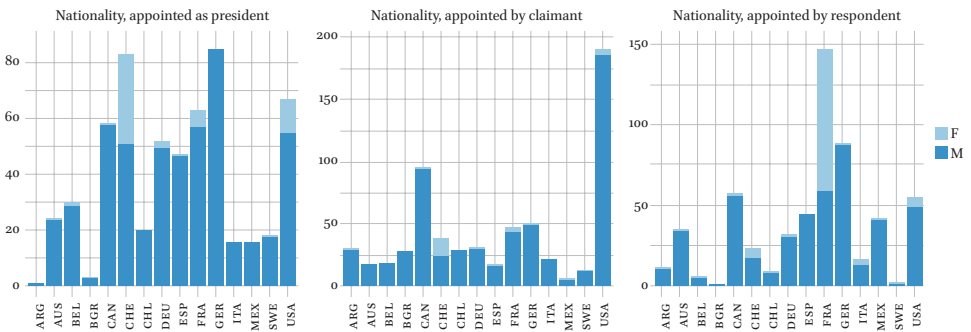
FIGURE 4   Arbitrators, by Nationality and Appointment

The language of arbitrators does not seem to have an impact on the language of the arbitration's proceedings, as the large majority of them are conducted in English, unless both the arbitrators and the parties to the dispute have another common language. Strikingly, when it comes to the language of proceedings, Spanish takes precedent over French. For example, when just considering ICSID cases, 489 have been conducted in English, 196 in Spanish, 70 in French, and only one in Portuguese.[26]

4.6   *Income Group*
If we examine the income group of the country of nationality of arbitrators, we can conclude that the overwhelming majority of arbitrators come from high income countries (around 83% considering the total number of appointments,

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26   International Centre for Settlement of Investment Disputes (ICSID), *supra* note 23.

Mother tongue, all arbitrators

Spanish	11 %
Italian	6.8 %
German	11.4 %
French	18.6 %
English	33.6 %

Mother tongue, total appointments

Spanish	9.4 %
Italian	6.9 %
German	11 %
French	23 %
English	28.6 %

FIGURE 5   Mother Tongue of Arbitrators

Mother tongue, appointed by president

Spanish	7.7 %
Italian	9.1 %
German	15.1 %
French	21.4 %
English	21.4 %

Mother tongue, appointed by claimant

Spanish	8.9 %
Italian	6.5 %
German	9.4 %
French	21.4 %
English	37.6 %

Mother tongue, appointed by respondent

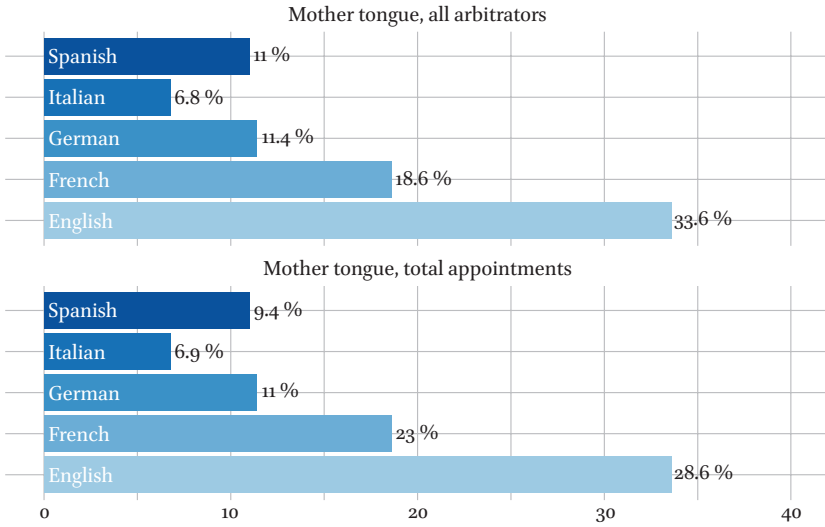|	
Spanish	12.7 %
Italian	4.8 %
German	7.3 %
French	27.6 %
English	27.7 %
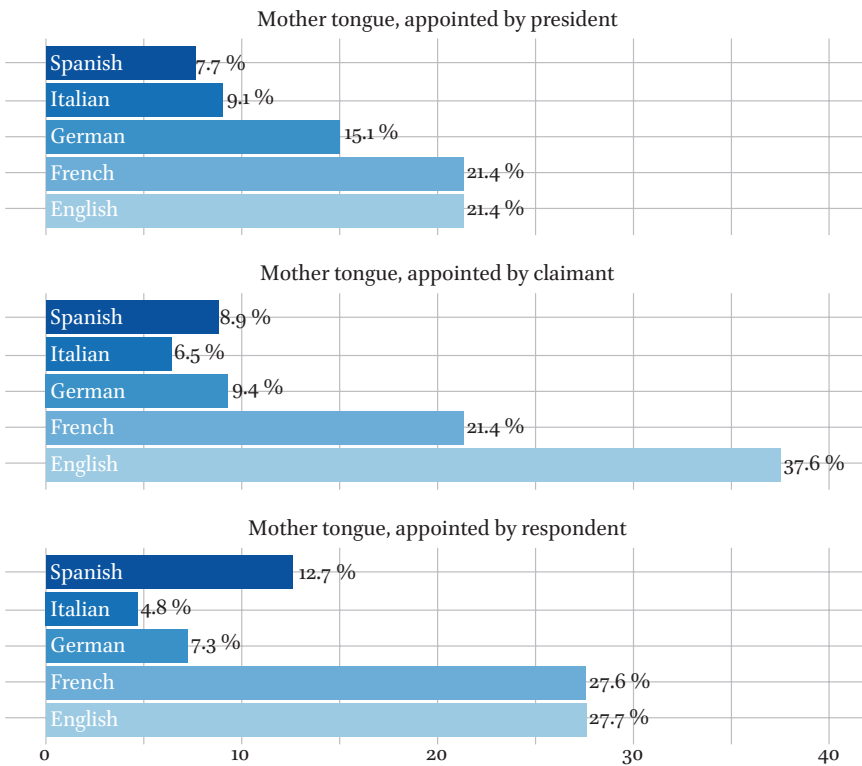
FIGURE 6   Mother Tongue of Arbitrators (by Appointment)

see Figure 7). While arbitrators from upper middle income countries have an important representation, arbitrators from lower middle income or low income countries, are rarely appointed in ISDS.

There are no major differences if we analyse the appointments made by the claimant or the respondent state, although appointments made by the claimant, or the appointment of the president of the tribunal (either by the parties to the dispute or by an appointment authority, see Figure 8), are even more largely on the side of high income countries.

4.7   *Legal Origin*

Based on their nationality, the legal origins of arbitrators are predominantly civil law countries – around 58% considering both male and female arbitrators – although civil law is significantly more present in female arbitrators, probably by the high number of appointments of Professors Stern and Kaufmann-Kohler.

An average of only 33% of the arbitrators come from a common law background. This may seem surprising, considering that a large number of arbitrators are US nationals, but the conclusion does not change even if we focus on the top 25 most appointed arbitrators, or on the overall number of appointments.
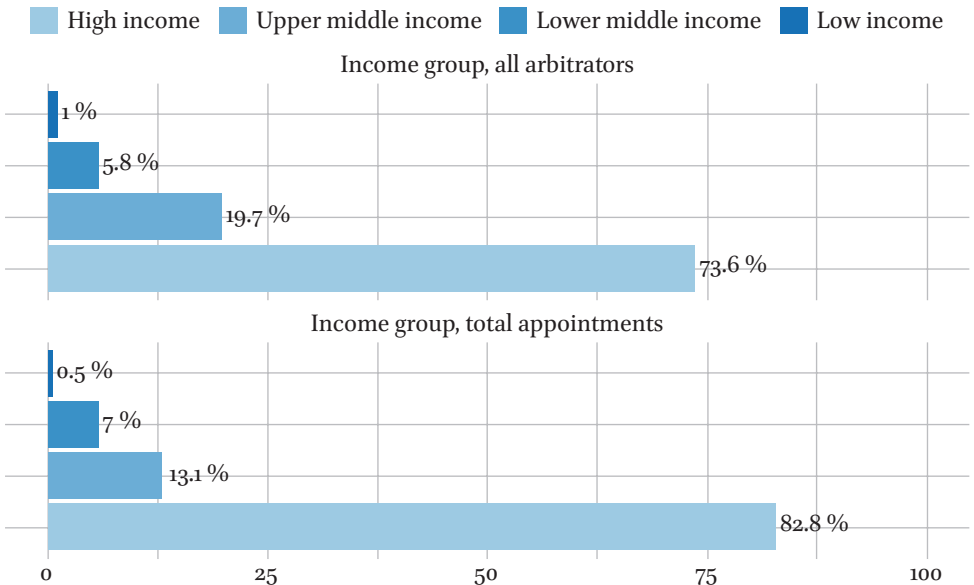
FIGURE 7   Income of Arbitrators

High income   Upper middle income   Lower middle income   Low income

Income group, appointed as president

0.1 %
2.4 %
9.5 %
88 %
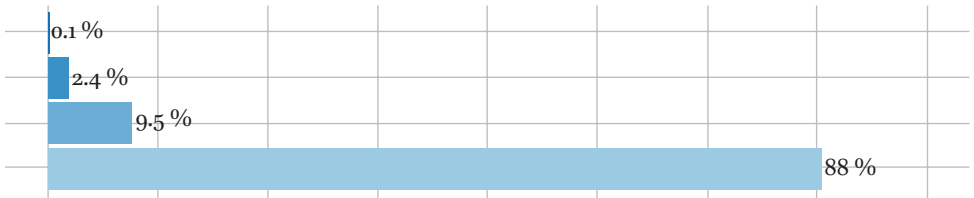
Income group, appointed by claimant

0 %
0.7 %
12.1 %
87.2 %
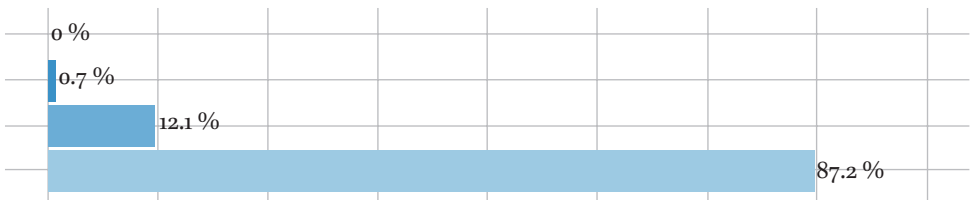
Income group, appointed by respondent

0.7 %
5.2 %
16.5 %
77.7 %

0   25   50   75   100
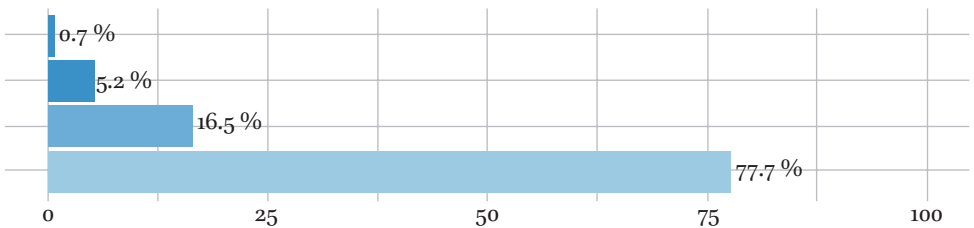
FIGURE 8   Income of Arbitrators (by Appointment)

4.8 *Educational Background*

We found that the legal backgrounds of arbitrators boil down to three types of education: civil law, common law or both. Muslim law, customary law and mixed systems are absolutely peripheral, and for that reason are not included in Figures 9 and 10, which indicate the percentage of arbitrators having each type of education.

Besides their initial legal origin, there is an important number of arbitrators (around 22%) that have had studies in both common and civil law systems, with a slightly higher tendency of arbitrators having civil law origins to undertake subsequent common law studies, rather than the opposite.

Civil Law

M — 54 %

F — 62.5 %

Common Law

M — 34.9 %

F — 31.2 %

Mixed

M — 11.1 %

F — 6.2 %

0   20   40   60
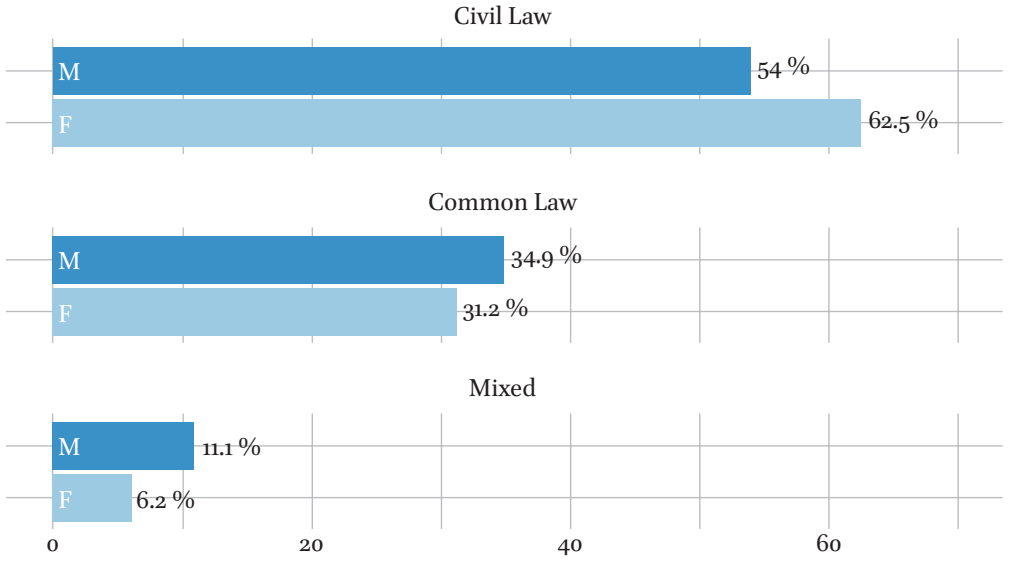
FIGURE 9   Arbitrators, by Legal Origin

Civil Law

M — 35.1 %

F — 45.8 %

Civil Law, Common Law

M — 24.3 %

F — 18.8 %

Common Law

M — 37 %

F — 33.3 %

0   20   40   60
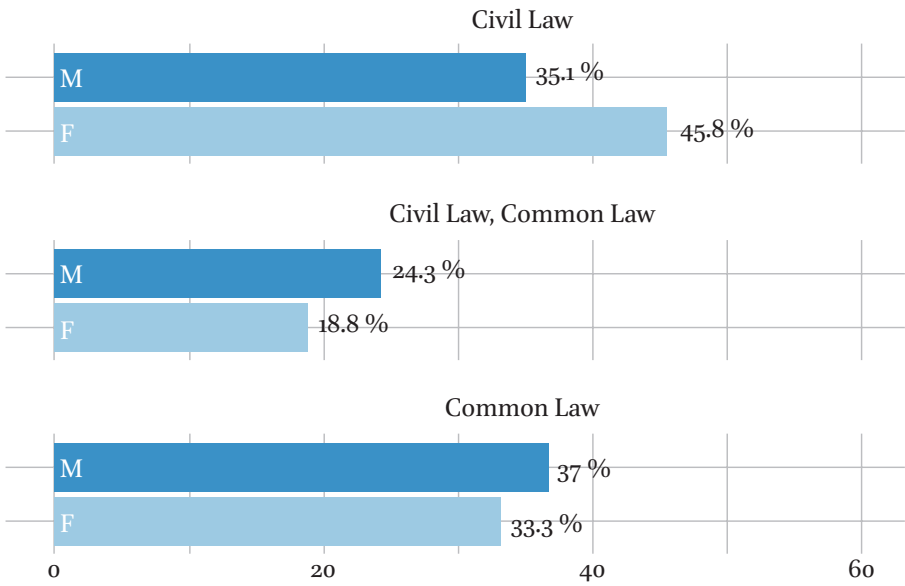
FIGURE 10   Arbitrators, by Legal Background

4.9   *Professional Background*

As Figure 11 below shows, large part of ISDS arbitrators have previous experience in international arbitration outside investor-state arbitration (around 87%), followed closely by experience in private practice (around 70%) and academia (around 64%). Prior governmental work, membership in some civil society organizations (particularly professional associations) and experience in the domestic judiciary is also relevant, but at a significantly lower level. Other types of professional background, for example, experience in domestic arbitration, or in the international judiciary or international organizations, are less prevalent than the two types of experience mentioned before (only around 15% of the sample). Finally – and somehow surprisingly – previous experience as corporate lawyers, does not seem to be particularly relevant for ISDS appointments.
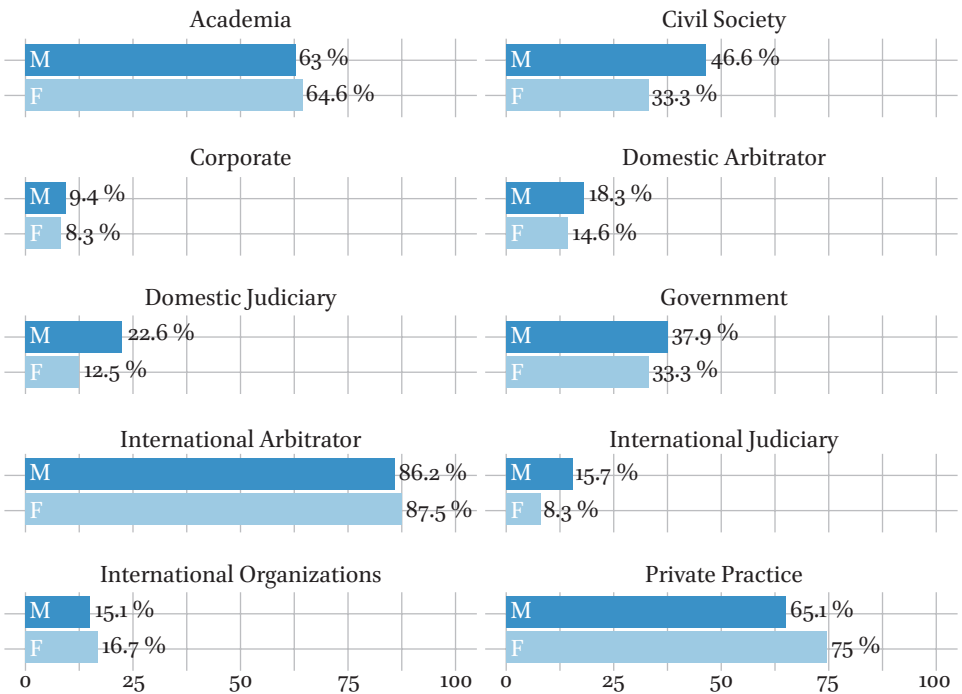
FIGURE 11   Arbitrators, by Professional Background

5 Does Background Matter?

5.1 *Experience Bias?*

Some of the literature we have examined put an important focus on the role of the president of the arbitral tribunal and of the previous experience of arbitrators in ISDS as factors that would explain the outcome of the dispute.[27]

Without disregarding those findings, we have focused on another method of measuring the possible influence of previous ISDS experience in the outcome of a case. We have examined whether the arbitral decisions were adopted unanimously by all the arbitrators, or whether there was a split with a dissenting opinion (2:1 following the traditional composition of arbitral tribunals). This is obviously not applicable to sole arbitrators (only 10 in the UNCTAD ISDS database of 817 cases).

The numbers in Tables 2, 3 and 4 show that the large majority of cases are decided unanimously by the three arbitrators, regardless of who has appointed them. From 528 concluded cases, dissenting opinions appear in only 102 cases (19.31% of the total): 44 cases were decided in favour of the state; 36 were decided in favour of the investor; five of them were settled (with three dissents in favour of the claimant and two in favour of the respondent state); three were decided in favour of neither party (liability found but no damages awarded); and in three cases there is no detailed information about the outcome (although in two of them an annulment proceeding is pending). Overall, dissenting opinions are slightly more common when the respondent state prevails, and are, therefore, in favour of the claimant.

If we examine the group of arbitrators with the most dissenting opinions (*i.e.*, more than one), we find only three of the top 25 most appointed arbitrators: Judge Charles Brower, Professors Francisco Orrego Vicuña and Brigitte Stern, being the first two, among the arbitrators most appointed by the claimant, and Professor Stern, the arbitrator most appointed by respondents.

If we further examine the top 25 ISDS arbitrators appointed by the claimant, the conclusion remains basically the same: in the large majority of cases, the arbitrators appointed by the claimant decide unanimously together with the other arbitrators. Even in the cases where the claimant loses, dissenting opinions by the arbitrators appointed by the claimant are rare. The sole exception seems to be Judge Brower, who in the 11 cases where an award was issued in favour of the respondent state, he issued dissenting opinions in five cases – still less than 50% of the cases.

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27 Waibel and Wu, *supra* note 18; Donaubauer, Neumayer and Nunnenkamp, *supra* note 16; Strezhnev, *supra* note 15.

TABLE 2   Arbitrators with Most Dissenting Opinions

Rank	Name	Gender	Nat	N	Diss	Resp Aw	Claim Aw	Diss Resp	Diss Claim
1	Brower, C.N.	M	USA	45	6	0	20	0	5
2	Orrego Vicuña, F.	M	CHL	47	3	2	8	1	2
3	Born, G.B.	M	USA	20	2	0	3	0	2
3	Grigera Naón, H.A.	M	ARG	21	2	0	5	0	2
3	Lalonde, M.	M	CAN	34	2	3	15	0	2
3	Stern, B.	F	FRA	88	2	30	0	2	0
3	Tawil, G.S.	M	ARG	11	2	0	5	0	2

N indicates the total number of appointments, and includes appointments in Annulment Committees.

Diss indicates the number of dissenting opinions.

Resp Aw indicates the number of cases concluded with an award while appointed by the respondent.

Claim Aw indicates the number of cases concluded with an award while appointed by the claimant.

Diss Resp and Diss Claim indicate the number of dissenting opinions given when appointed by the respondent and claimant, respectively.

TABLE 3   Top 25 Arbitrators Appointed by Claimant

Rank	Name	N	Gender	Nat	Income group	Claim	Claim Aw	Pro Claim	Diss Claim
1	Brower, C.N.	45	M	USA	High income	42	20	9	5
2	Alexandrov, S.A.	35	M	BGR	Upper middle income	28	7	3	0
3	Fortier, L.Y.	51	M	CAN	High income	26	8	4	0
4	Orrego Vicuña, F.	47	M	CHL	High income	25	8	6	2
5	Lalonde, M.	34	M	CAN	High income	19	15	9	2
6	Born, G.B.	20	M	USA	High income	18	3	0	2

TABLE 3   Top 25 Arbitrators Appointed by Claimant (*cont.*)

Rank	Name	N	Gender	Nat	Income group	Claim	Claim Aw	Pro Claim	Diss Claim
6	Grigera Naón, H.A.	21	M	ARG	Upper middle income	18	5	2	2
8	Price, D.M.	18	M	USA	High income	17	6	4	1
9	Hanotiau, B.	36	M	BEL	High income	14	5	3	0
9	Kaufmann-Kohler, G.	50	F	CHE	High income	14	10	7	0
9	Williams, D.A.R.	23	M	NZL	High income	14	6	4	0
12	Álvarez, H.C.	16	M	CAN	High income	13	6	3	1
12	Beechey, J.	18	M	GBR	High income	13	3	1	0
12	van den Berg, A.J.	38	M	NLD	High income	13	7	3	0
15	Bernardini, P.	34	M	ITA	High income	12	6	4	0
16	Bishop, D.	12	M	USA	High income	11	2	1	0
16	Hobér, K.	15	M	SWE	High income	11	5	3	0
16	Pryles, M.C.	21	M	AUS	High income	11	4	1	0
16	Tawil, G.S.	11	M	ARG	Upper middle income	11	5	1	2
20	Paulsson, J.	25	M	FRA, SWE	High income	10	3	2	0
20	Schwebel, S.M.	18	M	USA	High income	10	3	1	0
22	Cremades, B.M.	33	M	ESP	High income	9	6	1	1
22	Gaillard, E.	20	M	FRA	High income	9	5	2	0
22	Haigh, D.	9	M	CAN	High income	9	1	1	0
25	Park, W.W.	19	M	CHE, USA	High income	8	3	1	0
25	Poncet, C.	9	M	CHE	High income	8	3	3	0

N indicates the total number of appointments, and includes appointment in Annulment Committees.

Claim indicates the number of appointments by the claimant.

Claim Aw indicates the number of cases concluded with an award while appointed by the claimant.

Pro Claim indicates the number of pro-claimant awards.

Diss Claim indicates the number of dissenting opinions given when appointed by the claimant.

TABLE 4   Top 25 Arbitrators Appointed by Respondent

Rank	Name	N	Gender	Nat	Income group	Resp	Resp Aw	Pro Resp	Diss Resp
1	Stern, B.	88	F	FRA	High income	80	30	18	2
2	Thomas, J. C.	38	M	CAN	High income	37	19	15	1
3	Sands, P.	29	M	FRA, GBR	High income	24	9	7	1
4	Landau, T.	25	M	GBR	High income	21	7	4	0
5	Douglas, Z.	22	M	AUS	High income	19	2	2	0
6	Oreamuno Blanco, R.	33	M	CRI	Upper middle income	16	4	1	1
7	Dupuy, P.-M.	23	M	FRA	High income	15	6	4	0
8	Vinuesa, R. E.	15	M	ARG, ESP	High income	14	7	5	1
9	von Wobeser, C.	19	M	MEX	Upper middle income	12	10	8	0
10	Cremades, B. M.	33	M	ESP	High income	10	5	2	0
10	Lowe, V.	25	M	GBR	High income	10	2	0	0
10	Reisman, W. M.	16	M	USA	High income	10	9	6	0
10	Torres Bernárdez, S.	10	M	ESP	High income	10	3	3	1
14	Abi-Saab, G.	9	M	EGY	Lower middle income	9	3	1	1
15	Boisson de Chazournes, L.	10	M	FRA, CHE	High income	8	1	0	0
15	Crawford, J. R.	23	M	AUS	High income	8	4	3	0
15	Knieper, R.	16	M	DEU	High income	8	3	2	0
15	van den Berg, A. J.	38	M	NLD	High income	8	8	3	0
19	Gaillard, E.	20	M	FRA	High income	7	5	3	0
19	McRae, D. M.	19	M	CAN, NZL	High income	7	4	3	1
21	Bethlehem, D.	10	M	GBR	High income	6	1	1	0
21	Hossain, K.	7	M	BGD	Lower middle income	6	2	1	1

TABLE 4   Top 25 Arbitrators Appointed by Respondent (*cont.*)

Rank	Name	N	Gender	Nat	Income group	Resp	Resp Aw	Pro Resp	Diss Resp
21	Nikken, P.	7	M	VEN	Upper middle income	6	2	0	0
24	Bottini, G.	5	M	ARG	Upper middle income	5	0	0	0
24	Clodfelter, M. A.	5	M	USA	High income	5	1	1	0
24	Joubin-Bret, A.	5	F	FRA	High income	5	0	0	0

N indicates the total number of appointments, and includes appointments in Annulment Committees.
Resp indicates the number of appointments by the respondent.
Resp Aw indicates the number of cases representing the respondent concluded with an award.
Pro Resp indicates the number of pro-respondent awards.
Diss Resp indicates the number of dissenting opinions sent when representing the respondent.

We arrive at the same conclusion if we study the top 25 arbitrators appointed by the respondent, as it seems there is no major influence by the party appointment with the outcome of the dispute, having only one arbitrator (Professor Stern) with two dissents in favour of the state, out of 12 decisions where the outcome was in favour of the claimant.

In the literature, it has been highlighted that there exists the issue of the "double-hatters", meaning somebody that repeatedly has been appointed arbitrator and counsel for one of the parties (not in the same case, of course). In that context, it can be questioned whether "double-hatters" would be more prone to decide in favour of one of the parties (either claimant or respondent), something that would be of relevance, especially considering that some of them are in the Top 25 list of most appointed arbitrators (Paulsson, Cremades, Crawford, Alexandrov, Douglas, Landau, Hanotiau). Using Langford *et al.*'s top 25 list of "double-hatters",[28] we have examined if being a member of this selected group of arbitrators can represent a special bias when it comes to the actual outcome of the dispute. As can be seen in Table 5 below, the number of dissents is no different from the average observed in general ISDS appointments.

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28   Langford, Behn and Hilleren Lie, *supra* note 19, 325.

TABLE 5   Top 25 Double-Hatters

Name	N	Claim	Claim Aw	Pro Claim	Diss Claim	Resp	Resp Aw	Pro Resp	Diss Resp
Gaillard, E.	20	9	5	2	0	7	5	3	0
Paulsson, J.	25	10	3	2	0	4	3	3	0
Crawford, J.R.	23	1	1	0	0	8	4	3	0
Hobér, K.	15	11	5	3	0	0	0	0	0
Price, D.M.	18	17	6	4	1	0	0	0	0
Cremades, B.M.	33	9	6	1	1	10	5	2	0
Volterra, R.	7	6	2	1	1	1	0	0	0
Tawil, G.S.	11	11	5	1	2	0	0	0	0
Feliciano, F.P.	10	0	0	0	0	3	1	0	0
Park, W.W.	19	8	3	1	0	1	0	0	0
Schwebel, S.M.	18	10	3	1	0	4	4	1	0
Alexandrov, S.A.	35	28	7	3	0	1	1	0	0
Schreuer, C.H.	16	5	3	1	0	2	2	1	0
Schwartz, E.	5	1	0	0	0	2	2	1	0
Douglas, Z.	22	1	0	0	0	19	2	2	0
Hertzfeld, J.M.	4	1	1	0	0	0	0	0	0
Bishop, D.	12	11	2	1	0	0	0	0	0
Silva Romero, E.	9	0	0	0	0	2	2	2	0
El-Kosheri, A.S.	9	1	1	1	0	4	4	1	0
Landau, T.	25	1	1	0	0	21	7	4	0
Mantilla-Serrano, F.	4	2	1	0	0	0	0	0	0
Heiskanen, V.	12	2	2	1	0	2	1	1	0
Hanotiau, B.	36	14	5	3	0	4	3	1	0
Greenwood, C.	17	0	0	0	0	1	1	1	0
Sacerdoti, G.	7	1	0	0	0	3	0	0	0

N indicates the total number of appointments, and includes appointments in Annulment Committees.

Claim indicates the number of appointments by the claimant.

Claim Aw indicates the number of cases representing the claimant concluded with an award.

Pro Claim indicates the number of pro-claimant awards.

Diss Claim indicates the number of dissenting opinions sent when representing the claimant.

Resp indicates the number of appoinments by the respondent.

Resp Aw indicates the number of cases representing the respondent concluded with an award.

Pro Resp indicates the number of pro-respondent awards.

Diss Resp indicates the number of dissenting opinions sent when representing the respondent.

TABLE 6   Top 25 Annulment Committees

Rank	Name	N	Gender	Nat	Income group	N ann	N ann dec	Pro Resp	Pro Claim
1	Rigo Sureda, A.	22	M	ESP	High income	9	3	0	3
2	Kettani, A.	8	M	MAR	Lower middle income	8	2	1	1
3	Bernardini, P.	34	M	ITA	High income	7	3	1	2
3	Hascher, D.	7	M	FRA	High income	7	3	2	1
5	Abraham, C.W.M.	8	M	MYS	Upper middle income	6	2	0	2
5	Cheng, T.	9	F	HKG	High income	6	4	4	0
5	Oreamuno Blanco, R.	33	M	CRI	Upper middle income	6	5	4	1
5	Tomka, P.	15	M	SVK	High income	6	4	2	2
5	Zuleta, E.	20	M	COL	Upper middle income	6	6	5	1
10	Böckstiegel, K.-H.	36	M	DEU	High income	5	2	0	2
10	Castellanos Howell, A.R.	5	M	GTM	Lower middle income	5	2	2	0
10	Hanotiau, B.	36	M	BEL	High income	5	4	0	4
10	Knieper, R.	16	M	DEU	High income	5	4	1	3
10	Yusuf, A.A.	6	M	SOM	Low income	5	5	3	2
15	Danelius, H.	11	M	SWE	High income	4	3	0	3
15	Feliciano, F.P.	10	M	PHL	Lower middle income	4	3	0	3
15	Griffith, G.	16	M	AUS	High income	4	3	2	1
15	Guillaume, G.	11	M	FRA	High income	4	2	1	1
15	Khan, M.A.	9	M	PAK	Lower middle income	4	3	1	2
15	Pryles, M.C.	21	M	AUS	High income	4	0	0	0
15	Schwebel, S.M.	18	M	USA	High income	4	3	3	0
15	Shin, H.-T.	6	M	KOR	Lower middle income	4	2	0	2
15	Silva Romero, E.	9	M	COL, FRA	Upper middle income	4	4	1	3

TABLE 6　　Top 25 Annulment Committee (*cont.*)

Rank	Name	N	Gender	Nat	Income group	N ann	N ann dec	Pro Resp	Pro Claim
15	Söderlund, C.	8	M	SWE	Upper middle income	4	3	1	2
25	Ajibola, B.	3	M	NGA	Lower middle income	3	3	3	0
25	Alexandrov, S.A.	35	M	BGR	Upper middle income	3	1	0	1
25	Berman, F.	19	M	GBR	High income	3	3	0	3
25	Crawford, J.R.	23	M	AUS	High income	3	3	1	2
25	Kalicki, J.E.	10	F	USA	High income	3	0	0	0
25	McLachlan, C.A.	14	M	NZL	High income	3	3	3	0
25	McRae, D.M.	19	M	CAN, NZL	High income	3	1	1	0
25	Schreuer, C.H.	16	M	AUT	High income	3	1	0	1

N indicates the total number of appointments, and includes appointments in Annulment Committees.

N ann indicates the number of appointments by the respondent in Annulment Committees.

N ann dec indicates the number of appointments in Annulment Committees in which a decision was rendered.

Pro Resp indicates the number of pro-respondent decisions.

Pro Claim indicates the number of pro-claimant decisions.

As a control group, we have checked what happens when arbitrators are appointed by third parties – using all ICSID annulment committees as a case study. Although, we did not find a conclusive overall trend, certain arbitrators have shown a slight tendency to favour one of the parties, as can be examined in Table 6.

In sum, an experience bias, based on the previous appointments that a person has had as an arbitrator in ISDS, seems to have no major influence on the outcome of the dispute, as approximately 80% of the awards are decided unanimously. In the following section, we will examine if other personal factors that are not directly related to ISDS may have any effect on the outcomes, such as the professional or legal studies backgrounds of the arbitrators.

5.2   *Legal Bias?*

As detailed above, the background legal origin and legal education of the ISDS arbitrator is mainly civil and common law. But does this background influence the outcome of investor-state arbitration?

In Table 7 below, we display how often arbitrators vote in favour of countries having a civil, common, or mixed law system. We have done this by splitting arbitrators into groups according to their legal education. Here, obviously, we only take data from cases that resulted in an award, and we have considered dissenting opinions. We have also dropped arbitrators who did not belong to these three legal systems, because the number of cases they have decided was not relevant for statistical purposes (less than eight cases).

We have summarized our findings in Table 8. The second bar in the first graph tells us that an arbitrator with a civil law education only, will vote in favour of a respondent state with a common law legal system 75% of the time. Surprisingly, the percentage is only 50% if the respondent has a civil law system.
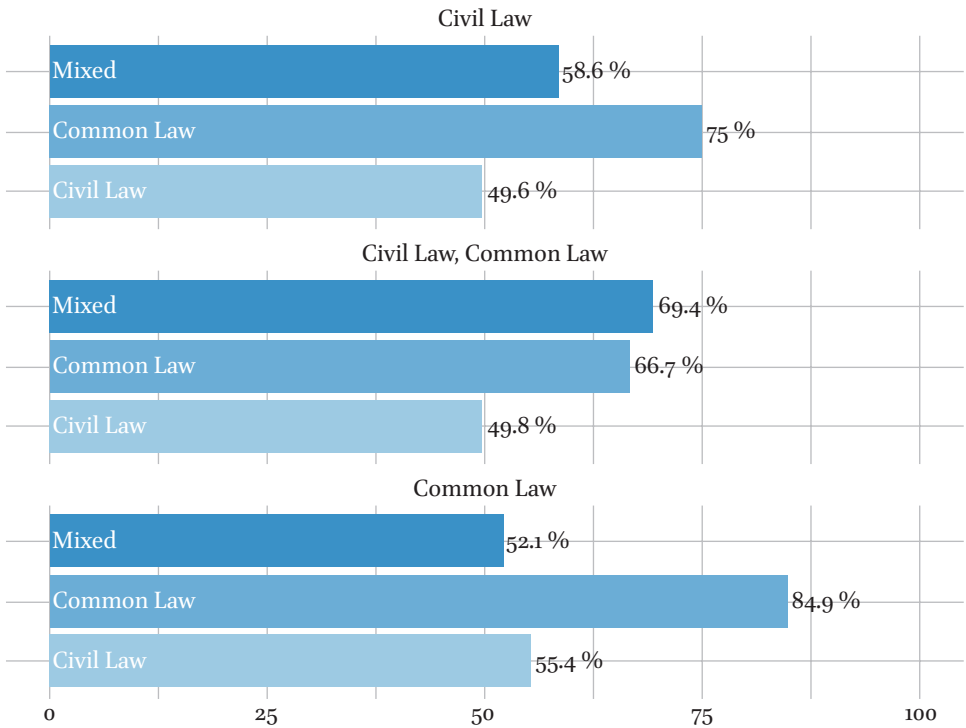
At the same time, the second bar in the third graph tells us that an arbitrator with a common law education only will vote in favour of a respondent state with a common law legal system 85% of the time. Not so surprisingly, the percentage is only 55% if the respondent has a civil law system.

Thus, seemingly, civil law ISDS arbitrators are harsher with civil law countries, when compared to common law countries. Conversely, common law ISDS arbitrators are harsher with civil law countries, when compared to common law countries. But that would be an oversimplification. The big caveat

TABLE 7   Arbitrators, by Rulings in Favour by Law System

legal system	legal education	cases	percentage
Civil Law	Civil Law	260	49.6%
Common Law	Civil Law	12	75%
Mixed	Civil Law	58	58.6%
Civil Law	Civil Law, Common Law	223	49.8%
Common Law	Civil Law, Common Law	12	66.7%
Mixed	Civil Law, Common Law	49	69.4%
Civil Law	Civil Law	242	55.4%
Common Law	Civil Law	53	84.9%
Mixed	Civil Law	73	52.1%

TABLE 8　　　Arbitrators, by Rulings in Favour by Law Education and Law System

Civil Law

Mixed	58.6 %
Common Law	75 %
Civil Law	49.6 %

Civil Law, Common Law

Mixed	69.4 %
Common Law	66.7 %
Civil Law	49.8 %

Common Law

|	
Mixed	52.1 %
Common Law	84.9 %
Civil Law	55.4 %

0　　　　　25　　　　　50　　　　　75　　　　　100

here is that we have not considered the nationality of the claimant to examine the existence of a possible bias, and future research should be pursued on this issue.

5.3　*Income Bias?*

As explained above, the large majority of ISDS arbitrators are nationals from high income countries, mainly the United States and a selected group of Western European countries. But does this mean that the income level of their country of origin influences the outcome of an investor-state arbitration case?

The first bars of Table 9 tell us that an arbitrator from a high income country will vote in favour of a low income respondent state 50% of the time, and that he or she will vote in favour of a high income country 70% of the time. Conversely, the second bars of the chart above show us that an arbitrator from a low income country will vote in favour of a low income respondent state 48% of the time, and that he or she will vote in favour of a high income country 67% of the time.

TABLE 9   Arbitrators, by Rulings by Income

High income

Low income	50 %
HIgh income	70.3 %

Low income

Low income	47.7 %
HIgh income	66.7 %

0   25   50   75
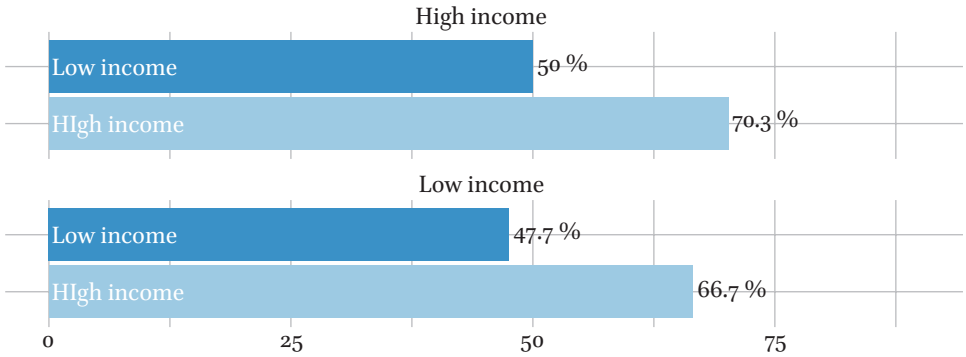
Thus, it would seem that high income countries are better off with arbitrators who also come from high income countries, but the outcome is very close to what arbitrators coming from low income countries would do. However, this is not at all surprising, as the existing information tells us that developed countries tend to win ISDS cases more often than developing countries win them, which is also consistent with the fact that developing economies are the respondent states in ISDS more often than are developed countries.[29]

6   Conclusion

The goal of this article has been to complement existing studies on the college of ISDS arbitrators, in trying to provide new data on their professional and personal backgrounds, as well as examining the possible effects of these circumstances on the outcome of investor-state arbitration. Our research concludes that, with a few exceptions, generally there does not seem to be a decisive influence between an arbitrator's prior ISDS experience or personal background on the outcome of an investor-state arbitration.

Our conclusions have important limitations, as we should keep in mind that what we observe is mostly a summary of descriptive statistics, and that we are very far from anything that would show that ISDS arbitrators are indeed biased or not. Furthermore, analysing only those ISDS cases that have resulted in a decision generates a form of selection bias.

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29   United Nations Conference on Trade and Development (UNCTAD), *supra* note 22.

We also do not want to oversimplify the reasons behind an investment award. It is clear that besides the personal and professional qualifications of ISDS arbitrators, other factors play a fundamental role in the decision of a specific dispute, like the applicable law, the arbitral rules, the actual facts of the case, the evidence produced during litigation, and even the relationship between members of the arbitral tribunal, among others.

Nonetheless, we believe that personal or professional information on ISDS arbitrators should not be analysed anecdotally, or by assuming or denying bias in favour or against claimants and states, merely based on nationality, income or age, and, therefore, more detailed research based on arbitral behaviour and decision-making would be welcomed in this field.