Affiliation Bias in Arbitration – Experiment 1
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[START OF SURVEY]

RD

[ARBITRATORS ARE RANDOMLY ASSIGNED TO TREATMENT USING EMBEDDED DATA VIA THE JAVASCRIPT BELOW]

[Note: Respondents were assigned to the same appointer in both the investor-state and investor-investor vignettes. We did so to avoid giving away that we were manipulating appointer and thereby potentially inducing demand effects. Treatment is still assigned independently of the respondents' attributes and since the vignettes are entirely separate and the order of the vignettes was randomized, this does not affect the substantive analysis of the experiment.]

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Qualtrics.SurveyEngine.addOnload(function()
{
	/*Place Your Javascript Below This Line*/


	/* Randomize Investor-State Dispute Treatments*/
	var is_appointers = [" by the claimant.", " by the respondent.", " by the parties.",
"."];
	var is_claimant_firms = ["a high income economy", "a middle income economy"];
	var is_respondent_countries = ["a middle income economy", "a low income economy"];
	var is_tribunal_outcome = ["that the respondent unfairly treated and wrongfully
expropriated the claimant's investment and that the claimant is entitled to compensation",
                                                    "that the respondent did NOT unfairly
treat nor wrongfully expropriate the claimant's investment",
                                                    "that the present dispute was outside of
the jurisdiction of the Centre (ICSID) and the competence of the tribunal",
                                                    "that the claimant's claims were
manifestly without legal merit, under ICSID Arbitration Rule 41(5)"];

	appointer_choice = is_appointers[Math.floor((Math.random()*4))];
	Qualtrics.SurveyEngine.setEmbeddedData("isAppointer",appointer_choice);
	Qualtrics.SurveyEngine.setEmbeddedData("isClaimant",is_claimant_firms[Math.floor((Math.ra
ndom()*2))]);
	Qualtrics.SurveyEngine.setEmbeddedData("isRespondent",is_respondent_countries[Math.floor(
(Math.random()*2))]);
	Qualtrics.SurveyEngine.setEmbeddedData("isOutcome",is_tribunal_outcome[Math.floor((Math.r
andom()*4))]);
	Qualtrics.SurveyEngine.setEmbeddedData("isOrder",Math.floor((Math.random()*2)));

	/* Randomize Investor-Investor Dispute Treatments*/

	/*var ii_appointers = [" by the claimant.", " by the respondent.", " by agreement of the
parties.", "  by the International Court of Arbitration.", "."];*/

	var ii_claimant = ["Fortune 500 company", "modest but growing local company in an
emerging economy country"];
	var ii_respondent = ["Fortune 500 company", "modest but growing local company in an
emerging economy country"];
	var ii_outcome = ["unanimously", "by majority"]
	var ii_damages = ["agreed on an independent expert randomly selected from a pool of
qualified experts who calculated damages for US$2,034,040.00.",
                                    "each presented equally credible witnesses. The claimant's
expert calculated damages for US$4,002,100.00. The respondent's expert calculated damages for
US$1,059,307.00."];

	Qualtrics.SurveyEngine.setEmbeddedData("iiAppointer",appointer_choice);
	Qualtrics.SurveyEngine.setEmbeddedData("iiClaimant",ii_claimant[Math.floor((Math.random()
*2))]);
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	Qualtrics.SurveyEngine.setEmbeddedData("iiRespondent",ii_respondent[Math.floor((Math.rand
om()*2))]);
	Qualtrics.SurveyEngine.setEmbeddedData("iiOutcome",ii_outcome[Math.floor((Math.random()*2
))]);
	Qualtrics.SurveyEngine.setEmbeddedData("iiDamages",ii_damages[Math.floor((Math.random()*2
))]);
	Qualtrics.SurveyEngine.setEmbeddedData("iiOrder",Math.floor((Math.random()*2)));

	this.clickNextButton()
});
```

Q0 This is a research study of international arbitration being conducted by researchers at Harvard University and the University of Arizona. The purpose of this research is to better understand how arbitrators make decisions. If you decide to participate, you will complete one survey. You will be asked to evaluate two hypothetical vignettes describing two arbitration proceedings. Afterwards, you will be asked a brief set of background questions and a short survey. The complete task will take approximately 10 to 15 minutes to complete. In order to analyze responses to the questionnaire, your answers will be recorded. This study has no anticipated risks. There are no direct benefits to this survey, but you may find it interesting to consider your responses to the presented vignettes. Findings from this study will be reported at academic seminars, at research association meetings, and in scholarly articles and journals. If you wish, you may request a copy of the research findings after they are published by sending an e-mail to astrezhnev@fas.harvard.edu or spuig@email.arizona.edu. Additionally, by completing the survey, you will be able to receive working papers and early copies of the research findings. Your participation in this study is completely voluntary, and you may refuse to participate or withdraw from the study without penalty or loss of benefits to which you are otherwise entitled. You may choose to skip any questions that you do not wish to answer without penalty. Additionally, no identifying information -- such as IP addresses and e-mail addresses -- will be linked to your responses. Your responses will be entirely anonymous. If you submit the completed survey, there will be no way to withdraw your responses from the study because the survey contains no identifying information. If you have questions or concerns regarding this survey or this research project in general, please contact: Anton Strezhnev by e-mail at (astrezhnev@fas.harvard.edu) or Sergio Puig by e-mail at (spuig@email.arizona.edu). If you have any questions about your rights as a research participant or any questions, concerns, suggestions, or complaints that are not being addressed by the researcher, please contact contact the University of Arizona Human Subjects Protection Program (HSPP) at 1618 E. Helen Street Tucson, AZ 85721. Phone (520) 626-6721. Email: VPR-IRB@email.arizona.edu.
The nature and purpose of this study have been explained to my satisfaction and I (participant) agree to become a participant in the study described above. I understand that I am free to discontinue participation at any time if I so choose. Answering yes continues the survey; answering no ends the survey.

- ❍ Yes (1)
- ❍ No (2)

Q29 Please print and save a copy of this form for your records.

[RANDOMIZE ORDER OF V1 AND V2]

V1 Imagine an investor-state dispute being conducted under the 2006 Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID). The claimant is a firm headquartered in ${e://Field/isClaimant}. The respondent is a country classified by the World Bank as a ${e://Field/isRespondent}. The claimant alleged that the respondent violated the provisions of a bilateral investment treaty to which the respondent is a party. Among other arguments, the claimant argued that the investor and its investments had been treated unfairly and that ultimately the respondent expropriated the claimant's investment located within the respondent's territory. The underlying dispute concerns an infrastructure project undertaken by the claimant under a concession contract with a governmental agency. The respondent argued in response that the claimant had violated provisions of the contract and that the investors received all compensation to which they were entitled.You were appointed to the tribunal${e://Field/isAppointer} After careful consideration of the facts of the case, the tribunal unanimously decided ${e://Field/isOutcome}. In their submissions on costs, both parties have requested that the other party bear the costs of the proceedings in full, including legal fees and expenses. The counsels for both parties behaved professionally and ethically during the proceedings.

Q1 What share of the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid by the respondent? Another member of the tribunal proposes that the tribunal should find a good compromise.
_____ Share paid by Respondent (1) (0-100 slider)

Display This Question:
If isOrder Is Equal to 0

Q2O1 How do you think the parties' expenses, including the cost of legal representation should be apportioned in this dispute?

- ❑ Claimant reimburses all of the Respondent's expenses. (1)
- ❑ Claimant reimburses some of the Respondent's expenses. (2)
- ❑ Each party bears its own expenses. (3)
- ❑ Respondent reimburses some of the Claimant's expenses. (4)
- ❑ Respondent reimburses all of the Claimant's expenses. (5)

Display This Question:
If isOrder Is Equal to 1

Q2O2 How do you think the parties' expenses, including the cost of legal representation should be apportioned in this dispute?

- ❑ Respondent reimburses all of the Claimant's expenses. (1)
- ❑ Respondent reimburses some of the Claimant's expenses. (2)
- ❑ Each party bears its own expenses. (3)
- ❑ Claimant reimburses some of the Respondent's expenses. (4)
- ❑ Claimant reimburses all of the Respondent's expenses. (5)

Q3 Please briefly discuss your reasoning for your answers to the above questions.

V2 Imagine a commercial arbitration dispute being conducted under the arbitration rules of the International Chamber of Commerce-Paris.The claimant is a ${e://Field/iiClaimant}. The respondent is a ${e://Field/iiRespondent}.The parties to the case agreed to bifurcate the proceedings in two phases, merits and damages. The primary dispute concerned whether the respondent complied with several contractual provisions over the course of several years. You were appointed to the tribunal${e://Field/iiAppointer} After careful consideration of the facts of the case, the tribunal decided ${e://Field/iiOutcome} that the respondent breached the contract and that the claimant is entitled to damages. In their submissions on damages the parties ${e://Field/iiDamages} The counsels for both parties behaved professionally and ethically during the proceedings.

Q4 How much money should the tribunal award to the claimant in damages? Please input a value between $0 USD and $4,002,100.00 USD. Another member of the tribunal proposes that the tribunal should find a good compromise.

Q5 What share of the cost of arbitration (the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court) do you think should be borne by the respondent (the losing party)? Another member of the tribunal proposes that the tribunal should find a good compromise.

_____ Share paid by Respondent (1)

Display This Question:
If iiOrder Is Equal to 0

Q601 How do you think the parties' legal costs should be apportioned in this dispute?

- ❑ Claimant reimburses all of the Respondent's expenses. (1)
- ❑ Claimant reimburses some of the Respondent's expenses. (2)
- ❑ Each party bears its own expenses. (3)
- ❑ Respondent reimburses some of the Claimant's expenses. (4)
- ❑ Respondent reimburses all of the Claimant's expenses. (5)

Display This Question:
If iiOrder Is Equal to 1

Q602 How do you think the parties' legal costs should be apportioned in this dispute?

- ❑ Respondent reimburses all of the Claimant's expenses. (1)
- ❑ Respondent reimburses some of the Claimant's expenses. (2)
- ❑ Each party bears its own expenses. (3)
- ❑ Claimant reimburses some of the Respondent's expenses. (4)
- ❑ Claimant reimburses all of the Respondent's expenses. (5)

Q7 Please briefly discuss your reasoning for your answers to the above questions.

V3 This survey is almost finished. We would like to ask you a few questions about your background. Please remember that you can choose not to answer any question.

Q8 What is your gender?
- ❑ Male (1)
- ❑ Female (2)

Q9 In what year were you born?

Q10 What nationality/nationalities do you have today?
- Nationality 1 (1) [OPEN RESPONSE]
- Nationality 2 (2)
- Nationality 3 (3)
- Nationality 4 (4)
- Nationality 5 (5)

Q11 What best describes your primary, current place of employment?
- ❑ Private Practice/Law firm (1)
- ❑ Professor/University (2)
- ❑ Government/Public sector (3)
- ❑ Other (4) _____

Q12 What is your highest level of education?
- Degree (1)

Q13 In total, on how many arbitrations have you served?
- ❑ 0 (1)
- ❑ 1 (2)
- ❑ 2-5 (3)
- ❑ 6-9 (4)
- ❑ 10 or more (5)

Q14 Have you ever been appointed to an investor-state dispute?
- ❑ Yes (1)
- ❑ No (2)

Q15 In your opinion, how fair is the international investment arbitration system currently?
- ❑ Very fair (1)
- ❑ Somewhat fair (2)
- ❑ Not at all fair (3)

Q16 Do you agree or disagree with the inclusion of investor-state arbitration provisions in the Trans-Atlantic Trade and Investment Partnership agreement (the free trade agreement between the USA and the European Union)?

- ❑ Agree (1)
- ❑ Disagree (2)
- ❑ No Opinion (3)

Q17 In your opinion, do states or investors tend to benefit more from investor-state arbitration, or do both benefit about equally?

- ❑ States benefit more (1)
- ❑ Investors benefit more (2)
- ❑ Both benefit about equally (3)

Q18 In your opinion, how well does the current international investment arbitration system take into account the interests of developing countries?

- ❑ Very well (1)
- ❑ Somewhat well (2)
- ❑ Not well at all (3)

Q19 In your opinion, how difficult is it for firms to successfully litigate a claim against a state in an investor-state arbitration?

- ❑ Very difficult (1)
- ❑ Somewhat difficult (2)
- ❑ Not difficult at all (3)

Q20 In your opinion, do you think that investor-state arbitration tribunals' interpretation of what constitutes "fair and equitable treatment” of foreign investments tends to be too expansive, too narrow or just right?

- ❑ Too expansive (1)
- ❑ Too narrow (2)
- ❑ Just right (3)