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An Abundance of Caution

A Mixed-Methods Analysis of Law Firms and Conflict of Interest in International Investment Arbitration

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List of Abbreviations

BIT	Bilateral Investment Treaty
GAR	Global Arbitration Review
IBA	International Bar Association
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
ISDS	Investor-State Dispute Settlement
LCIA	London Court of International Arbitration
PCA	Permanent Court of Arbitration
PITAD	PluriCourts Investment Treaty Arbitration Database
SCC	Stockholm Chamber of Commerce
UNICITRAL	United Nations Commission on International Trade Law

1 Introduction

'Grand Old Men'[1] is perhaps the most reiterated phrase in scholarly research on the investor-state dispute settlement (ISDS) system.[2] ISDS is a collective term for a heterogeneous arbitration system that resolves investment disputes between investors and states. ISDS is legally grounded in a multitude of bilateral investment treaties (BITs) and its decisions can be enforced internationally through the New York and ICSID Conventions. The term 'Grand Old Men'[3] was coined by Dezalay and Garth in their comprehensive empirical study of the international arbitration community.[4] Dezalay and Garth's pioneering study was based on a large number of interviews with arbitrators and counsel, and generated valuable and early insight into the social and professional networks that constitute the international arbitration system. The study applied Bourdieu's concept of social capital[5] to the arbitration market, revealing how certain groups established and maintained their standing within the system through means of informal networks. The book revealed that these networks were primarily formed by highly educated, mature males, who had received their appointments based on reputation and social networks built over long, distinguished careers. The network was indeed made up of 'Grand', 'Old', and, at the time, exclusively 'Men'.[6] The network Dezalay and Garth describe is one where appointments are traded between the members of the 'club',[7] and where education, previous experience and status within the network determines who is assigned to the most favourable arbitral positions.

In the two decades since it was published, Dezalay and Garth's work has prompted further scholarship on the intricate mechanisms of the ISDS system. Some scholars have stressed the lack of geographical, educational and socio-economic diversity among the arbitrators[8], other have scrutinised the significant male bias in ISDS.[9] The networks and entanglements between

[1] Dezalay and Garth (1996) at 34
[2] e.g. Giorgetti (2013), Puig (2014), Behn, et al. (2017), Rogers (2005)
[3] Dezalay and Garth (1996) at 34
[4] Ibid.
[5] Bourdieu (1986)
[6] According to PITAD, the first female arbitrator was appointed in 1999.
[7] Dezalay and Garth (1996) at 10 supra note 7
[8] Franck, et al. (2015)
[9] St. John, et al. (2017), Giorgetti (2013)

individual arbitrators has been mapped,[10] while recent work has investigated the practice of 'double-hatting', i.e. individuals acting as both arbitrators and counsel within the system.[11]

This thesis will likewise investigate the networks and social capital of the ISDS system, building on many of the studies cited above. However, there is a vital difference to previous work: the present study considers not the networks between individual arbitrators, but the networks and relationships between individual arbitrators and law firms. By drawing on the massive PluriCourts Investment Treaty Arbitration Database (*PITAD*)[12], detailing the involvement of 996 law firms and over 4000 named individuals in the ISDS system, the thesis will increase our understanding of the influence and power of law firms in ISDS networks.

The overarching aim of this study is thus to first, *analyse the extent to which law firms can influence and come into potential conflict with arbitrators in the ISDS system, especially through arbitrator selection processes*; and second*, to analyse how effectively the current conflict of interest rules protect against conflicts between arbitrators and law firms and what can be done to reform these rules to protect the ISDS system against such influence*.

To address the overarching aim of the thesis, I have developed three specific research questions:

a) To what extent do current regulations on conflict of interest address the network effects that law firms may pose to the ISDS system, how have these effects been addressed by ISDS tribunals to date, and how might law firm conflicts be dealt with in the future?
b) How can the significance and influence of law firms in the ISDS be identified, mapped and measured, and to what effect?
c) What are the actual relationships between the most influential arbitrators and the top law firms, and how might these relationships create real or perceived conflict of interest issues for the ISDS system?

This thesis seeks to answer these three research questions through three integrated analyses. In the first analysis, I will employ a qualitative approach to investigate how the key arbitral rules address conflict of interest in the relations between arbitrators and law firms in the ISDS system.

[10] Puig (2014), Behn, et al. (2017)
[11] Ziade (2009), Sands (2013), Behn, et al. (2017)
[12] PITAD (2015)

Further, through a study of key arbitrator challenge procedures that have occurred to date, I will investigate tribunals' position on the significance and contents of the regulations currently pertaining to conflict of interest issues in the ISDS system.

In the second analysis, I will provide descriptive statistics on law firms and arbitrators to investigate how significant law firms are in the ISDS system. By evaluating how many cases each law firm litigates, which side they represent and where they are located, I will demonstrate the rising significance of law firms as nodes in a network, and more specifically I will locate an elite subset of this network.

Finally, I will expand on the quantitative data with a network analysis, to determine how influential the top firms are, and map out and quantify their relationships with the leading arbitrators.

By utilising this combination of qualitative and data-driven approaches, this thesis will provide new and original insights into how the law firms influence the ISDS system, particularly in relation to arbitrators and their selection, and will also widen the discourse on how the ISDS system currently does or does not manage this influence through regulation.

1.1 Structure of the Thesis

This thesis is structured as follows: In chapter 2 I charter the state of the art, present the ISDS system and its actors; and provide insights into the scholarly discourse on arbitrators, the law firms and the critiques that have been raised. In chapter 3, I offer an in-depth description of the methods and data I utilise in the thesis, as well as some key challenges that these incur. Thereafter, in chapter 4, I analyse the legal frameworks that regulate conflict of interests in ISDS. This is followed by chapter 5's quantitative analysis of the law firms in the ISDS system. In chapter 6, I apply network analyses to further illustrate the relationships and the interconnections between the ISDS system's actors. The discussion in chapter 7 draws the results from the three analyses together through a consideration of law firms as gatekeepers in ISDS, cementing their position in the system. Ultimately, I propose a set of potential remedies that may address the key issues I have identified throughout this thesis.

2 The Investor-State Dispute Settlement System (ISDS) – Legitimacy, Influence and the Rise of the Elite

The international investor-state dispute settlement system (ISDS) is a beast of many heads. It lacks any formal coherence, and its mechanisms of conflict resolution is regulated by a myriad of international conventions, municipal laws and formal and informal principles.[13] In the vast majority of cases, the underlying legal instrument is a bilateral investment agreement (BIT). Currently, there are 2969 such BITs, where 2369 are in force across the globe.[14] While the agreements vary based on their signatories, as well as the time of signing, they exhibit many of the same qualities and provisions.

The main method of conflict resolution in ISDS is arbitration. Arbitral decisions are enforced by two distinct, but overlapping international treaties: the ICSID Convention and the New York Convention. The majority of cases (52%) are arbitrated as part of the ICSID Convention.[15] The remaining are regulated by the UNICITRAL arbitration rules (29%), and a myriad of lesser used legal frameworks of international commercial arbitration centres.[16]

Depending on the rules, disputes consist of an initial complaint, an arbitration, a possible annulment hearing (in the case of ICSID), followed by possible enforcement in local courts under the protection of one of the Conventions. Investors tend to favour the procedure under the ICSID Convention if available, as the enforcement mechanisms under the Convention are far less susceptible to municipal courts' interference.[17] It is beyond the scope of this thesis to go into detail about the system itself, however a short description of the actors within the system is appropriate (the following paragraphs are based on Born's comprehensive overview[18]).

The perceived primary actors in the system are the parties and the arbitrators. The parties will normally consist of a private individual or company on the claimant side, and a sovereign state on the other. The arbitrators, which usually vary from one to three, decide the dispute with

[13] Born (2014) at 124
[14] UNCTAD BITs (2017)
[15] Based on data from the PITAD database
[16] Ibid.
[17] A majority of BITs (2184) contain provisions allowing parties to seek arbitration and enforcement under the ICSID treaty. (UNCTAD BITs (2017))
[18] Born (2014) Chapter 12

binding effect. Beyond these primary actors, we find four other groups that have become important actors in the increasingly complex system. The most important actors beyond the primary actors are the legal counsel and their adherent law firms. Legal counsel is in practice a prerequisite of the system, and litigating a case without counsel is unheard of. Legal counsel range from sole counsel to global mega-firms.[19]

The third actor group, whose importance is just beginning to be mapped scientifically, are tribunal secretariats.[20] They facilitate hearings, construct rules, provide suggestions for arbitrators and provide the parties with secretarial functions. The last group; the expert witnesses, provide evidence on matters of law, cost analysis and technical facts.[21]

ISDS is thus something of an oddity in international law. Private parties may enforce rights given to them under BITs, directly against the state that is considered in breach of such rights. This rather unusual mechanism has raised large amounts of criticism over the last decades.

2.1 Appointment and Challenge of Arbitrators

An arbitral tribunal is usually formed by three arbitrators. The tribunal typically consists of each party's wing arbitrator and a chair. The appointment process varies slightly within the ISDS system, depending on the treaty and situation. Wing arbitrators are normally appointed by a party, although with some exceptions.[22] The claimant's wing arbitrator will almost always be nominated by the claimant. In most cases, the respondent's arbitrator will be appointed by the respondent, however as respondents in some cases refuse to participate in the arbitral procedure,[23] this position may also be appointed by the secretariat.[24] The appointment of the chair typically follows one of three patterns: Parties agree to appoint a chair, the wing arbitrators appoint the chair, or the appointment is left to the arbitral institution acting as secretariat for the proceedings.[25] For further details on the appointment of arbitrators I again refer to Born for a thorough description.[26]

[19] Based on data from the PITAD database.
[20] They are included in the underlying datasets forming in this thesis, as well as for St. John, et al. (2017), Behn, et al. (2017)
[21] Born (2014) at 2276
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.

If a party considers one or more of the arbitrators unfit to perform their duties, they may raise a challenge to have the arbitrator(s) removed. Depending on the rules that apply to the ISDS dispute, either the remaining two arbitrators decide, or a decision is made either by the institution or authority that facilitated the appointment.[27] As I discuss in further detail in chapter 4, when the concern is conflict of interest, the threshold for impropriety is generally high.[28]

2.2 The Role of Law Firms in the ISDS System

Because of the popularisation of the ISDS system and the vast increase in caseloads over the last twenty years,[29] the role of specialised law firms has been increasingly important. The legal counsel can largely be divided up into seven categories: Sole counsel, boutique firms, barrister chambers, local specialised firms (or in many cases local representatives), international Global 100 legal firms[30] and finally, specialised legal teams from government's interior departments[31]. The increased complexity and size of the system requires expert knowledge both of case matter and procedural routines.[32]

The law firm's involvement in ISDS may be briefly summarised in the following timeline:

1. Evaluating the potential of a case, either after being approached by a client, or by approaching a potential client
2. Preparing briefs and documents for the case
3. Presenting clients with a choice of potential arbitrators
4. Litigating the case
5. Advising on annulment and enforcement proceedings

This thesis will focus on step 3 – the choice of arbitrator. The arbitrator's views on substantive law, jurisdiction, procedural matters, as well as the arbitrator's relative standing and influence over the other arbitrators on the tribunal, may tilt the outcome of a case in one direction or the other.[33] We can see from the PITAD database that 629 arbitrators have been selected to the ISDS system to date. Choosing the right arbitrator from this pool is largely part of the law firm's domain. Law firms' influence on arbitral selection arguably constitutes a potential source of

[27] Ibid.
[28] See also Giorgetti (2017) at 4
[29] Born (2014) at 124
[30] Based on data extracted from the PITAD database
[31] Lazo (2016)
[32] Born (2014) at 2847
[33] Salomon (2002)

conflict of interest, because in selecting the right arbitrator, the firm may potentially influence the outcome of the case. Furthermore, it is up to any given arbitrator to accept or decline an appointment, thus a counsel's relationship with an arbitrator may facilitate a client in acquiring the arbitrator that they desire.[34]

2.3 Critical Discourse on the ISDS System

The unique structure of the ISDS system, where private entities may enforce rights given under international treaties directly, has throughout the system's lifetime generated significant scholarly and public discourse. Over the last decade, the volume of discourse has increased in line with the rise in number and size of cases being handled by ISDS tribunals.

Presenting the complete scholarly discourse would only provide limited insight on the overarching questions of this thesis. To chart the state of the art, I will therefore in the following discuss selected works that deal with how the various actors establish and gain influence, and how such influence may have an effect on the ISDS system.

This thesis assumes a fundamental premise in all its argumentation: that arbitrators when conducting arbitrations to *some* degree are influenced by other factors than the black letter of the law. In the general discourse on legal bodies, researchers have argued that legal practitioners are indeed human, and that factors other than law and jurisprudence may have an impact on their decisions.[35] In his 2012 article, Sands, a participator in the ISDS system himself, agreed with the premise that arbitrators may be effected by external circumstances; and as an example presented a compelling argument that when mixing roles, particularly switching between being an arbitrator and a counsel ('double hatting'), a certain bias ensues, even if it is unconscious and unreflected.

As described in the introduction, Dezalay and Garth introduced the idea of informal networks and social capital as key factors in the arbitral selection process. In 2003, Ginsburg critiqued the focus on social capital in the arbitration market. He argued that a greater emphasis should be placed on how arbitrators utilise network effects to create insiders and outsiders by creating informal networks that share certain properties.[36] Puig expanded on this idea by applying social

[34] Born (2014) at 1680
[35] Shai, et al. (2011), Glynn and Sen (2015), Sands (2013).
[36] Ginsburg (2003)

network analysis on the currently available data of arbitrators in the ICSID system. [37] Puig illustrates how Ginsburg's networks may be expressed and quantified using social network mapping. Specifically, Puig shows how social capital is distributed in a network of arbitrators. This capital may influence both arbitrator selection, and perhaps the choices arbitrators make.[38] While social capital is difficult to quantify, *network capital*, i.e. the aggregate of social capital embedded in the ties and relations between actors in the system, can to some extent be quantified through various network analyses. As Puig's' study was restricted to arbitrators in ICSID cases, it did not address other actors that affect the system. As part of a study to quantify the extent of 'double hatting', Behn et al., applying data from PITAD, expanded on Puig's' work to include a more comprehensive list of cases, as well as including expert witnesses, secretaries, and perhaps most importantly for this study – legal counsel.[39] By applying a weighting factor to each working relationship, and utilising this with various analytical algorithms, Behn et al. could rank every member of the system in terms of network capital.[40]

It is worth noting that both Puig's and Behn et al.'s studies focused exclusively on the individuals of the arbitration system, whether in their roles as arbitrators, counsel, witnesses or secretaries. Simultaneously, Segal-Horn and Dean have argued the rise of what they categorise as *super-elite law firms*. [41] According to the authors, a small selection of Anglo-American firms have through a mixture of international mergers and strategic expansions established themselves as a new category of elite law firms. By expanding on Behn et al. and Puig's analyses, this thesis will attempt to identify how law firms in general, and the super-elite law firms in particular, are gaining influence in the ISDS by continuingly increasing their network capital.

In a working paper, St. John et al. express how the system's preference for network capital, or in their words, 'preference for historical experience' creates an effect where the inflow of new arbitrators is very limited.[42]

[37] Puig (2014)
[38] Ibid.
[39] Behn, et al. (2017)
[40] Ibid.
[41] Segal-Horn and Dean (2011)
[42] St. John, et al. (2017)

Moreover, in 2012 Schultz and Kovac reproduced Dezalay and Garth's study, fifteen years later.[43] They claimed that the social capital of the arbitrator was as a lesser driver for arbitrator selection, and suggested that their perceived skills and experience have become the most important factors in arbitrator selection. I argue that this may perhaps relate to a shift away from the personalised value of social capital, to the more distributed network capital. In the context of this thesis' aims, I would like to point out an interesting finding in the paper: 'Non-association with a law firm' was identified as one of the weakest selection criteria when counsel was selecting an arbitrator to nominate. [44] This indicates that counsel do not appear to be concerned whether arbitrators are associated with a law firm, indicating a lack of awareness of potential conflict of interest issues related to law firms.

This thesis also draws on the quantification Behn et al. have conducted of the double hatting phenomenon. Behn et al found double hatting to be frequent and accepted throughout the ISDS system.[45] The actors of the system are in other words conceivably so used to the tight-knit structure of ISDS that they do not see it as a potential problem. This might further explain an empirical analysis conducted by Giorgetti in a forthcoming book chapter,[46] where she identifies that there have only been 84 challenges out of a total of 1620 appointments in the ICSID system.[47] Of these 84, only 4 resulted in the forced dismissal of the arbitrator. While other institutions/rules have higher dismissal rates,[48] this is still a remarkably low number. It should be noted that the count of 4 may not reflect the reality of the system, as according to Giorgetti, 30% of challenges resulted in some sort of alteration to a tribunals' composition. One could speculate whether arbitrators voluntarily, either by accepting that a conflict existed, or by wanting to avoid any perception of conflict, resigned.[49] Nonetheless, if we consider that either 4 (0.2% of all appointments) or 25 (30% of 84 challenges, or 1.5% of all appointments) resulted in changes caused by conflict of interest, this number is still remarkably low.

Rogers argues that in the eyes of system's participants, ethics have moved from a peripheral issue to being one of the most prominent subjects of discussion within the arbitral institutions. She contends that the community has recognised that self-regulation is necessary in maintaining

[43] Schultz and Kovacs (2012)
[44] Ibid.
[45] Behn, et al. (2017)
[46] Giorgetti (2017), Puig (2014) at 405
[47] Includes ICSID cases and annulments up to 2015
[48] Giorgetti (2017) points out that 22% of challenges under UNICITRAL rules succeed.
[49] Ibid.

the legitimacy of the system.[50] Perhaps with a bit more light shone on the influence of law firms, the ISDS community may realise that to maintain its legitimacy, it needs to also address the structural force that law firms pose.

[50] Rogers (2014) at 5

3 Methods: Qualitative, Quantitative and Network Analysis

This thesis applies three distinct methods to answer the three discrete research questions: qualitative studies of the legal texts and case law; quantitative studies of law firm's involvement in the system; and network analysis to determine the influence of the firms in the network. While each method provides a complementary perspective on the overarching objective, each method also poses some challenges that must be addressed. In the following, I outline the methods as well as the scope and caveats of this thesis.

3.1 Qualitative Analysis

This thesis offers a focused study of the legal texts associated with conflict of interest in the ISDS system. I will primarily consider operative rather than procedural rules. Due to the heterogeneous nature of ISDS, I will furthermore only investigate the most frequently used regulatory frameworks. Regarding case law, this study will consider a key set of arbitral challenges. These represent a small subset of the case law for any given case, and hence only a fraction of the case law in the entire system. The purpose is to provide an overview of the legal discourse, rather than provide an exhaustive study of the legal instruments and their implementations. The primary intent of the qualitative analysis is to provide a frame of reference for the quantitative and network analyses as well as the discussion.

3.2 The PITAD Database – Quantitative Analysis

The empirical basis of the study is data from the PITAD database. The PITAD database is a project under *PluriCourts – Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order*, supported by the Norwegian Research Council.[51] It is a comprehensive database of ISDS cases: containing 1077 cases and more than 4000 named individuals, it currently provides the most complete picture of the ISDS landscape. The database is developed by Behn et al., building on other efforts to systemise ISDS data.[52] PITAD captures several types of ISDS cases, including cases under the normal and extended ICSID facilities, as well as cases under PCA, SCC, LCIA, UNICITRAL and under contractual agreements. Due to the traditionally closed nature of arbitration, the database is not exhaustive. However, PITAD is the most complete database currently available, including public and private sources of information,

[51] PITAD (2015)
[52] ICSID Case Database (2017), ibid., UNCTAD (2017)

mapping up to 138 variables for each case. Parameters include details on arbitrators, law firms, the object and result of each case, as well as a comprehensive timeline of the cases. For this thesis, the database has been augmented and adjusted to provide improved structure and coherence for network and statistical analyses. To facilitate analysis for this thesis, as well as for several scholarly articles,[53] I have developed a set of software tools to collate and systemise the data. The PITAD database is still a work in progress, and new data is being added on a regular basis. The quantitative and network analyses executed in this thesis are designed as computer programs, which are integrated into the PITAD database. This allows future researchers to reapply the analysis when additional data is added and updated to the database.

3.3 Network Analysis, Nodes and Ties

Network analysis has proved to be a useful tool in legal studies, providing new and quantifiable insights into otherwise complex and convoluted data.[54] In network analysis, all data is represented in one of two core elements; nodes and ties. Nodes represent entities such as people, firms, countries or cases. Ties represent and describe the relationship between the nodes.[55] Examples of ties may be working relationships between individuals (nodes), or a law firm's (node) involvement in a case (node). Ties may be uni- or bi-directional – indicating a one-way or reciprocal relationship.

Graphs are usually analysed through visual mapping tools, a computational method called graph traversal, and various index generating algorithms such as PageRank, centrality, HITS rating, etc.[56] Visualisation of a graph is done by projecting all nodes and ties onto a two- or three-dimensional plane, and subsequently applying a given algorithm that through multiple iterations clusters the nodes according to the weight of its ties. A 'force-directed' algorithm clusters nodes that have frequent connections together, and illustrates network cores efficiently.[57] Executing network analysis based on visualised graphs alone should however be approached with caution. Due to the number of variables in data, and in the way the graphs may be configured, great variations could be generated simply by altering minor parameters. With the ISDS data, visual demonstration is especially complicated, as the large number of 'core' nodes – nodes connected

[53] Behn, et al. (2017), St. John, et al. (2017)
[54] Behn, et al. (2017), Puig (2014), Strandburg, et al. (2006)
[55] Carolan (2013) at 43
[56] Dobrev, et al. (2012), Brin and Page (1998), Kleinberg (1999), Carolan (2013), Wang, et al. (2013)
[57] Collberg, et al. (2003)

to many other core nodes – create a dense centre, making it difficult to interpret beyond the fact that these nodes are part of the core.

This does not offset the value of using graphs as analytical tools. By applying various algorithms on the networked data, it is through rankings and relative scores still possible to interpret patterns and information from the processed graphs. One such algorithm is graph traversal, which forms the basis for the analysis in sections 6.1 and 6.2. This is a computational method of 'walking' the graph: visiting each node; recording and correlating its data and then using its ties to determine its relationships. In most cases, the traversal will compute the graph from every possible entry point.[58] The third method of network analysis is applying other index-generating algorithms. By counting and compounding the ties between nodes, key metrics are made available. These include PageRank, centrality, and various other eigenvector algorithms.[59] To enhance the comparability with Behn et al.'s article I likewise use the HITS (hub) score for the rankings.[60]

It should be noted that most graph-related scoring is relative rather than absolute. This means that the scoring will only be applicable when read relative to other scores obtained using the same data and same parameters. A comparison should not be read based on the absolute numbers presented, but rather using the ranking positions to compare the variations between this thesis and other rankings. [61]

An important differentiation between simple descriptive statistics and the utilisation of graphs is the way data is regressively processed. Most of the scoring[62] presented in chapter 6 does not calculate scores based only on a single dimension for a single entity (e.g. ranks by the number of cases per firm), but regressively counts every possible pathway, from every possible perspective, in relation to every other node in the system.[63] This way of scoring captures in other words not merely the node itself, but its place and importance in relation to every other node.

[58] Dobrev, et al. (2012), Wang, et al. (2013)
[59] Dobrev, et al. (2012), Brin and Page (1998), Kleinberg (1999), Wang, et al. (2013)
[60] Collberg, et al. (2003), Behn, et al. (2017)
[61] Wang, et al. (2013)
[62] See section 6.1 on ranking the law firms.
[63] Wang, et al. (2013)

3.4 Scope and Caveats

The methods and analyses I utilise in this thesis should be seen in the context of its overarching goal; to examine how law firms potentially influence the ISDS system through arbitrator selection; and how effectively the conflict of interest rules protect the integrity of the ISDS system against such influence. The purpose is therefore not to provide a comprehensive understanding of conflict of interest in general, nor how the rules would apply in specific situations. For a general overview of the rules for conflict of interest I will refer to other scholars' work on the subject.[64]

One caveat of the present study is that I do not consider chronological changes in the dataset. Due to time and technical constraints it is beyond the scope of this thesis to add a time dimension to the analysis. As ISDS is more than 40 years old, analysing it as a synchronous whole generates some unfortunate inaccuracies, yet preliminary experiments of analysing limited timeframes do not seem to make significant impact. In any case, future research is required to better understand the development of ISDS over time.

The use of data-driven analyses, especially when based on non-exhaustive data, also raises source-critical concerns. The first question of quantitative legal research is; are we comparing apples with apples? Considering the large number of cases, with case sizes ranging from hundreds of thousands of dollars to multi-billion dollar judgements, we are dealing with eclectic data. Moreover, factual circumstances and procedures are by no means homogenous. However, this is the nature of the object of inquiry, and quantitative approaches will necessarily gloss over the eccentricities of individual cases. An additional challenge is that due to the system's confidential nature,[65] this thesis is as mentioned above based on a non-exhaustive dataset. It is beyond the scope of this thesis to evaluate each case in detail, and even if this was achievable, most of the internal deliberations and actions not found in official documents, and would thus still create gaps in our understanding of the cases.

However, with these caveats in mind, the use of quantitative data analysis in legal studies is still of significant value. As I demonstrate throughout this thesis, data-driven approaches offer new perspectives and methods, advancing our understanding of the complex, entangled networks in the world of international arbitration.

[64] E.g. Rogers (2014), Giorgetti (2017), Born (2014) Chapter 12
[65] Rose (2014) at 185-186, Schreuer (2011)

4 A Qualitative Perspective on Conflict of Interest in the Legal Frameworks of ISDS

This section offers a qualitative perspective on the legal frameworks regulating conflict of interest in the ISDS system. The analysis is conducted through three stages: First, I identify the most frequently applied legal frameworks in ISDS. Second, I briefly discuss the contents of the rules and Conventions; followed by an analysis of key concepts through selected case law.

This thesis does not seek to evaluate how the law firms *themselves* are subject to conflict of interest rules[66], rather I discuss whether conflict of interest can arise through the *arbitrators' relationships with law firms*. In this section I will primarily discuss general conflict of interest issues, as the current rules and cases do not consider law firms specifically. However, a general discussion is relevant as the challenges raised against arbitrators may be understood as comparable to the potential conflicts of interest embedded in the relationship between arbitrators and law firms.

4.1 The Legal Frameworks of ISDS Cases

Before I engage in a more detailed discussion on the rules regulating the ISDS system, I will present a short overview of the rules most frequently used, and thereby outline the scope of the qualitative analysis.[67]

The BIT, the underlying legal instrument, does not directly specify the applicable rules. Rather it will list different types of arbitration that are available to the claimant. In a large number of BITs the party is offered a choice between submitting their arbitration to the ICSID facilities, or participating in ad-hoc arbitration established by UNICITRAL rules. If the party chooses the ICSID path, the applicable rules will be those of the ICSID convention, and the ICSID arbitral rules. If a party chooses the ad-hoc path, any rules (e.g. UNICITRAL) specified in the

[66] Such a study, considering the case law, would regardless be challenging. Tribunals have on at least three occasions considered their power under the ICSID convention, and in all three found that the convention does not grant them the power to rule on the counsel's conflict of interest unless it is to undeniably safeguard the proceedings. HEP v. Slovenia (2008) at 10,13,14, Rompetrol v. Romania (2010) at 6, ibid.

[67] Beyond the sphere of the ISDS system, municipal courts, may have additional laws or practises that go beyond the regulations described in this section. As this thesis is restricted in its scope, and the regulations occur at a point beyond the influence of the arbitrators themselves as they fall under municipal courts' jurisdiction, I will not discuss this aspect in detail.

convention will apply, unless the parties agree to alter them. In addition, parties may by agreement apply further legal or ethical frameworks such as the International Bar Association's (IBA) Guidelines on Conflict of Interest (see 4.4.2).[68]

From the PITAD database we can establish that 52% of the cases and annulments follow the ICSID path (an additional 5% use the ICSID Additional Facility rules[69]), 29% apply UNICITRAL rules and the remaining 6 % follow either ICC, SCC, or LCIA rules.[70] For the sake of brevity, supported by the fact that 89% of the cases in the system follow these, I will in the following sections primarily focus on ICSID and UNICITRAL regulations.[71]

4.2 Legal Regulation on Conflict of Interest

If one is to describe the rules on conflict of interest, the most appropriate word would perhaps be 'sparse'. Each set of rules (ICSID, UNICITRAL, ICC etc.) have their own regulations that address how and under what circumstances a party may challenge an arbitrator, and how the remaining arbitrators should handle this challenge.

4.2.1 ICSID Convention

The ICSID Convention[72] contains two rules indirectly covering conflict of interest for arbitrators. The operative regulation is Article 57 (my emphasis):

> A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a *manifest* lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 14 (1), my emphasis:

[68] IBA Guidelines on Conflicts of Interest (2014)
[69] ICSID Arbitration (AF) Rules (2006)-– A ruleset that allow parties to use the ICSID rules and facilities, when one party is not a member of the Convention.
[70] ICC Arbitration Rules (2017), SCC Arbitration Rules (2017), , LCIA Arbitration Rules (2014), PCA Arbitration Rules (2012)
[71] ICSID Convention and Arbitration Rules (2006), UNICITRAL Arbitration Rules (2010)
[72] The ICSID rules have the operative and substantive regulations have equal wording as the Convention, hence I have chosen to only discuss the Convention. Please note that several cases discussed below refer to the rules.

> Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, *who may be relied upon to exercise independent judgment*. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

As we can see from Article 14 (1), the criteria that relate to conflict of interest are relevant when the arbitrator may not be relied upon to expertise independent judgement. Seen in conjunction with Article 57, there must be a 'manifest lack' of such qualities. The inclusion of 'manifest' requires that the issue is clear and identifiable.[73] I will return below with a short summary of at what level different tribunals have chosen to set the bar.

4.2.2 UNICITRAL Rules

The UNCITRAL rules are structured in a different way to the ICSID Convention.[74] The qualifying criteria is here 'justifiable doubts'. Article 12 (1) reads (my emphasis):

> Any arbitrator may be challenged if circumstances exist that give rise to *justifiable doubts as to the arbitrator's impartiality or independence*.

A direct comparison to the ICSID Convention may indicate a rule more susceptible to challenges based of conflict of interest. The ratio of success reflects this, with 22% successful challenges compared to 5% in ICSID[75]. It should here be noted that only issues that are unknown to the parties at the time of the tribunals establishment may qualify.[76]

4.2.3 Other Rules

The operative rules of the Stockholm Chamber of Commerce (SCC)[77] and the International Chamber of Commerce (ICC)[78], exhibit significant resemblance to the UNICITRAL rules, and appear to exhibit a similar threshold for conflict of interest.

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[73] See section 4.4.1
[74] The UNICITRAL rules have been subject to multiple revisions, the extract below is from the 2010 edition. In some of the jurisprudence below the 1976 rules have been applied. While the contents of the regulation remain the same, it was previously known as article 10(1)
[75] Giorgetti (2017) at 15
[76] Ibid.
[77] SCC Arbitration Rules (2017) at Article 15(1)
[78] ICC Arbitration Rules (2017) at Article 14(1)

4.3 Patterns of Regulations

While the regulations above vary slightly in their wording, and at what threshold violation is likely to result in dismissal; they are clearly brief, and leave substantive discretion to the tribunal or institution applying the rules. In addition to the regulations mentioned above, there are several procedural variations between the different set of rules that will not be discussed further here.[79]

The point most relevant to the objective of this thesis, is that *none of the legal frameworks regulating conflict of interest directly address the relationship between law firm and arbitrators*.

4.4 Case Law

The legal frameworks regulating conflicts of interest are thus rather sparse and broadly worded. As with most legal texts, however, interpretations made by various tribunals may offer some insight into depth of the rules. It should be noted that each tribunal in ISDS is independent of all others, there are no binding precedents,[80] and no clear hierarchy of authority (with the exception of the ICSID annulment tribunals).[81] As the tribunal are composed of skilled legal practitioners, it is however common for them to seek coherence in the interpretation of law.[82] Tribunals therefore tend to cite and reference other tribunals when they make decisions, so even though there is no formal rule of precedence, there is an informal drive for convergence[83]. Hence, in this section I will comment on key decisions that relate to arbitrators' conflict of interest, decisions that may provide guidance to the interpretations of the rules. Most cases discussed below do not have any connection to law firms, as very few challenges are directly related to firms. However, given a more comprehensive understanding of the law firms' role, most of the topics raised by parties in challenges are arguably symptomatic of a larger issue.

While in the last decade requests for arbitral dismissals have increased significantly;[84] only a handful of challenges have resulted in the removal of an arbitrator.[85] This should not lead to the

[79] Giorgetti (2017)
[80] Born (2014) at 3822, Rogers (2014) at 317
[81] SGS v. Philippines (2004)
[82] Rogers (2014) at 317 supra note 29
[83] Born (2014)
[84] For a general overview of this I refer to Rogers and Tumer (2015), Born (2014) at 1895, Vasani and Palmer (2015).
[85] Giorgetti (2017), Rogers and Tumer (2015), Born (2014)

conclusion that failed challenges indicate the absence of conflicts; rather I hold that this is the result of a relatively high threshold set forth in the current legal frameworks.[86] As certain types of conflict are repeatedly raised and dismissed, this suggests that these concerns should at minimum be considered when formulating future rules.

4.4.1 Objective or Subjective Standard

The first legal question I consider is whether tribunals should apply an objective or subjective stance when considering conflict of interest. The tribunals in AWG v Argentina,[87] Grand River v United States[88] and National Grid v Argentina[89] all agree that the term *justifiable doubt* in UNICITRAL Article 10 (1) maintains that the standard must be based on an objective stance. Under the ICSID Convention, the standard is again objective.[90] In addition, these facts must satisfy the 'manifestly' standard – a requirement of clarity set forth in art 14(1).[91] However, there is variation in the tribunals' stance on whether the rules require alleged facts proven by objective evidence. While the tribunal in ConocoPhillips v Venezuela[92] argues that objective evidence must be provided; a later challenge in the same case argues that the ICSID Convention does not require actual proof.[93] The latter is in line with several other decisions, where a third party presented with the evidence needs to agree that there is a conflict.[94]

4.4.2 IBA Guidelines – For Inspiration Only?

The IBA Guidelines on Conflict of Interest in International Arbitration serve as a voluntary agreement, which the parties may choose to incorporate. None of the current BIT agreements nor any of the major institutional legal frameworks incorporate the IBA guidelines. The guidelines assign a set of general principles determining when a relationship or action constitutes a conflict of interest, and what types of relationships require disclosure. An actionable list of occurrences is sectioned off into red, orange and green categories. Red-category offenses would bar an arbitrator from participating, orange implies instances where the arbitrator should consider disclosing information, and green-category occurrences do not

[86] Giorgetti (2017) at 4
[87] AWG v. Argentine (2008) at 11
[88] Grand River v. USA (2007) at 2
[89] National Grid v. Argentine (2007) at 18
[90] E.g. Repsol v. Argentinia (2013) at 17, Abaclat and others v. Argentina (2011) at 11
[91] SGS v. Pakistan (2002) at 5, Alpha v. Ukraine (2010) at 12
[92] ConocoPhillips v. Venezuela (2012) at 18
[93] ConocoPhillips v. Venezuela (2014) at 11
[94] E.g. Caratube v. Kazakhstan (2014) at 17 which agrees with the tribunal in Blue Bank v. Venezuela (2013) at 11

require disclosure. There is currently little empirical information on the extent of the IBA Guidelines being applied in the ISDS system. However, parties in practice never incorporate these into their agreements. [95]

In multiple cases, tribunals have made statements on the applicability of the IBA Guidelines on Conflict of Interest in International Arbitration.[96] In an arbitral challenge on the case of SARL v Gabon, the tribunal indicated that the guidelines have an indicative value,[97] while the tribunal in Alpha Projecktholding v Ukraine attain that they have a certain value in light of their frequent arbitral use and their relation to the UNICITRAL and ICSID rules.[98] Yet, in Urbaser v Argentina the tribunal explicitly points out that while the IBA Guidelines may provide inspiration, they may not be considered part of the legal basis for any decisions (unless agreed upon by the parties), as they are not part of the ICSID Convention. Several other tribunals appear to recognise the duality[99] that while the IBA Guidelines may provide valuable inspiration, the tribunals reject them as an authoritative legal source.[100]

4.4.3 Standards of Disclosure

Before I offer some examples of proposed conflict of interest issues, I wish to comment on a statement made by the tribunal in Universal Compression v Venezuela.[101] The statement is made in response to an arbitrator's failure to disclose involvement in another case where one of the counsel was also a party. By the arbitrator's own statement 'an isolated participation in a formal event at the early stage of the arbitration'. The tribunal nevertheless argues that the arbitrator should have disclosed details of any professional relationships that relate to the counsel of the case, 'out of an abundance of caution'. This statement resonates with the underlying argument presented throughout this thesis. As the network analysis in section 6.2 will illustrate, the number of connections that either directly or indirectly may place law firms within an arbitrator's zone of 'abundance of caution' is omniscient and, in many cases, so entwined that mechanisms should be established to ensure disclosure, even if such interactions may appear incidental to the individual arbitrator.

[95] Born (2014) at 1840, Rogers (2014), Rogers and Tumer (2015)
[96] Born (2014) at 1840, Rogers and Tumer (2015)
[97] SARL v Gabon (2009) at 6
[98] Alpha v. Ukraine (2010) at 20
[99] E.g. Universal Compression v. Venezuela (2011) at 24
[100] E.g. Abaclat and others v. Argentina (2011) at 8, ConocoPhillips v. Venezuela (2012) at 18, Blue Bank v. Venezuela (2013) at 11
[101] Universal Compression v. Venezuela (2011) at 31

A few cases indicate what incidental connections to law firms might look like. The issue that perhaps comes closest to this question are the cases involving the London based barrister chambers. A barrister chamber is a construct where independent counsel pool certain resources such as office space and support staff, while maintaining financial and legal independence.[102] In Hrvatska v Slovenia, the tribunal considered a challenge where the arbitrator and one party's counsel are from the same chamber.[103] The tribunal concludes that no 'hard-and-fast' rule bars the phenomenon, however it argues that there is 'no absolute rule to the opposite effect'.[104] The tribunal is therefore critical to the lack of disclosure and argue that this is an 'error of judgement'.[105] Again, we can observe that the tribunal urges an 'abundance of caution', where full disclosure is presented as an ideal.

4.4.4 Indirect Connections – A Micro-Network?

Karen Daele describes two further, unpublished cases at the ICC Court of Arbitration under the ICC rules. [106] The potential issue of conflict is co-authorship of various publications between arbitrators and counsel or other partners at counsel's law firm.[107] Neither of the instances were sufficient to disqualify the arbitrators in question.[108] While the details of the cases are not published, the discussion raises an interesting theme relevant to this thesis. If we were to consider this example in terms of network analysis (see section 3.3), the ICC Court of Arbitration does appear to have identified a potential conflict by applying a rudimentary network analysis. A schematic representation of this analysis would be:

Counsel → Law firm → Counsel's partner → Co-authored article → Arbitrator

While the ICC Court of Arbitration ultimately rejected the challenge, and the lack of details makes any steadfast conclusions difficult; the mere discussions of extended networks show that parties are conscious of such indirect connections, and that the social networks of law firms may be highly relevant to such concerns.

[102] Born (2014) at 1893
[103] The challenge in this case is for the counsel, as both parties wish to retain the arbitrator.
[104] HEP v. Slovenia (2008) at 12
[105] Ibid.
[106] Daele (2012)
[107] Ibid.
[108] Ibid.

4.4.5 Government Loyalty

In another challenge, the tribunal in Saint-Gobain Plastics v Venezuela[109] discuss the potential dismissal of an arbitrator, as he has had previous employment in Argentina's legal team. The tribunal argues that as long as the relationship is disclosed, no manifest conflict ensues; but the case raises two relevant points. First, the challenge was raised on the basis that the arbitrator was previously employed by another state. This implies that parties have an impression that all states have certain shared interests, and that to work for one state can potentially bias an arbitrator in favour of all states. This impression may likewise be applicable for law firms when they work for both states and claimants at the same time. While they may not have direct conflicts, as they do not represent the same states, an impression that all states somehow have shared interests persist. This issue is also pointed out by the tribunal in the arbitrator challenge in the Saint-Gobain Plastics v Venezuela, where the complaining party's stance that there is an inherent 'issue conflict' that is *shared* between states, was addressed and dismissed.[110] Second, the case illustrates an analogous concern that actors working for governments, whether as internal or external counsel (or law firms), may bring allegiances or knowledge with them when they represent other interests.

4.4.6 Requirements of Clarity, Entangled Realities

The issue of close relationships between arbitrators and parties/parties' counsel has been subject to multiple (albeit unsuccessful) challenges. In Tidewater v Venezuela, Brigitte Stern, one of the most central arbitrators, and one of two 'formidable women'[111] in the ISDS system, was challenged on the basis that she holds three appointment for the same party in other cases.[112] The tribunal found no grounds for dismissal, pointing out Stern's partaking in several unanimous decisions against the party that appointed her, and thereby indicating her independence.[113] Stern has been the subject of dismissal claims based on similar circumstances – in Electrabel v Hungary[114] the claimant remarked upon Stern's continuing relationship with both Hungary and the law firm Arnold & Porter. The tribunal specifically claims that these issues are not sufficient to demonstrate conflict of interest either by themselves or together.[115] Additionally, the tribunal remarks that the complaining party required 30 pages of descriptions

[109] Saint-Gobain Plastics v Venezuela (2013)
[110] Ibid.
[111] Puig (2014) at 410
[112] Tidewater v. Venezuela (2010) at 21
[113] Ibid.
[114] Electrabel v. Hungary (2008) at 9
[115] Ibid.

to make their case – hence, in the tribunal's opinion not fulfilling the 'manifest' requirement in the ICSID rules.[116] In the context of this thesis, the last comment raises an interesting observation – the tribunal appears to argue that the 'manifest' threshold requires a relation to be clear, easily described and distinguishable. However, such relations are frequently entangled and convoluted. Yet, the tribunal in this example, as well as several others dealing with parallel issues[117], seem to agree that the existence of relationships is not sufficient to put an arbitrator in a state of conflict.

4.5 Conclusions

With this brief analysis of case law, I do not claim to provide an exhaustive analysis of parameters whereby a conflict of interest passes the legal threshold. The purpose of this section has rather been to emphasize that law firm-arbitrator relationships may be perceived as problematic by the parties. I argue that tribunals and parties treat these networks in isolation, observing only an isolated set of ties and nodes when considering whether to challenge an arbitrator, and for the tribunals when deciding such challenges. The complex web of relations that exist within the ISDS system in my opinion warrants a broader discussion on how to untangle and process entwined relationships between law firms and individuals.

[116] Ibid.
[117] E.g. İçkale v. Turkmenistan (2014), Universal Compression v. Venezuela (2011)

5 The Significance of Law Firms in the ISDS System: Quantitative Analyses

In the following section I provide descriptive statistics that highlight various aspects of law firms' involvement in the ISDS system, as well as identify key characteristics of influential law firms in international arbitration. I describe which firms handle the most cases, introduce a 'double hatting' score for law firms, discuss the relationships between law firms and states, and internal legal departments within states that appear to be analogous in nature to large law firms. Finally, I briefly discuss the geographical location of law firms.

The purpose of the quantitative analyses is to provide a new and original empirical understanding of the significance of law firms within ISDS, and the concentration and depth of their influence. By identifying the most influential law firms, we can gain a better understanding of how concentration of influence may induce conflicts of interest, and moreover evaluate if the current rules to regulate them are sufficient.

5.1 Number of Cases per Law Firm

The number of ISDS cases that a law firm has handled is a useful proxy to determining both the influence and the potential for conflicts within the ISDS system. As can be observed by the discussion in 4.4, law firms that represent the same types of clients (i.e., either states or investors) or appoint the same arbitrators repeatedly, may be interpreted by the parties as potential sources of conflicts. Law firm concentration, by which I mean the law firms' share of ISDS cases, is of particular interest, as firms with a larger share logically would be more susceptible to encounter potential conflicts.

I begin by presenting a calculation of counsel appearances correlated to a law firm in ISDS cases. The term 'appearances' should be clarified, as the measure only counts a firm once for each case, regardless of how many physical persons are involved. This leads to a slight bias in the data, as a small firm that contributes one counsel to a case, and large firm that contributes 20, are counted equally. However, due to the somewhat restricted data available on counsel – where in some cases every lawyer who worked on the case is listed in the tribunal's proceedings, while in others only the lead counsel receives mention – this leaves a fairer picture of firm involvement than counting individual counsel appointments. Beyond this, the premise of this

thesis is that the firms themselves have a form of inherent agency and represent something beyond their individual counsel.

The total number of counsel appearances registered in the system is 2954, distributed over 1077 ISDS cases and annulments. Out of these almost 3000 appearances, 541 appearances are assigned to internal government legal departments and 345 to sole practitioners, which fall outside the scope of this analysis. This leaves 2068 appearances shared between law firms. According to the data displayed in Table 1, the top 25 law firms collectively have 811 of these appearances. This equates to a 40% share. The top 5 firms alone count 311 appearances, equating a 15% share of the total. As a comparison, the next 25 on the list are represented in 282 cases, and the remaining 568 count 975 cases to their collective names.

The five leading firms in the system are *Freshfields Bruckhaus Deringer, White & Case, King & Spalding, Allen & Overy and Arnold & Porter*. *Freshfields* alone has appeared as counsel in 85 ISDS cases, while the top five firms collectively average 62 cases. The average for all law firms is in comparison 3.31 cases. It is noteworthy that out of all 25 top firms, 21 are Global 100 firms,[118] two are on the GAR 100 list, and two are barrister chambers. In the top 100 firms, 45 are on the Global 100 list, while 25 are on the GAR 100.[119] The first boutique firm, Appleton & Associates, comes in at place 28 with 14 appearances, while the first non-OECD firm *Travieso, Evans, Arria, Rengel & Paz* comes in at eighty-sixth place with 5 cases in total.

The data in Table 1 clearly suggest that clients tend to choose leading global law firms when proceeding with cases. This tendency may be explained along several lines. First, Segal-Horn and Dean argue that there is an emergence of a global super-elite, mirroring the general economic occurrence of the market with high barriers of entry evolving into oligopolies.[120] Conspicuously, several of the top 5 firms in Table 1 are discussed as examples of this new breed of law firms. St. John et al.'s discussion of a marketplace with high entry barriers, where the risk of choosing inexperienced arbitrators may be perceived as unacceptable, may also be relevant to the choice of law firms.[121] Beyond this, more prosaic reasons may of course also apply; many of the companies utilising the ISDS system are large companies themselves,[122]

[118] GLOBAL 100 (2016)
[119] GAR 100 (2017)
[120] Segal-Horn and Dean (2011)
[121] St. John, et al. (2017)
[122] Franck and Wylie (2015) at 500 supra note 183

may hence have pre-existing relationships with several of the elite law firms. However, as I will return to below, an additional, perhaps more compelling reason to choose top firms, is their access and relationships with the top arbitrators.

5.2 Double Hatting and Law Firms

Sands has written extensively and critically on the *double hatting* phenomenon in the ISDS system.[123] Double hatting can be defined as a situation where a given individual serves one or more of roles at same time, e.g. counsel, arbitrator, expert witness. As noted in section 2.3, this concept was later quantified by Behn et al.[124] Using a measure that indicates whether a given individual operates as both an arbitrator and as counsel within the same timeframe, Behn et al. demonstrate that a large number of arbitrators within ISDS participate on both sides of the bar. Behn et al. argue that while this in most cases may be innocuous, certain structural challenges occur.[125] These challenges are further illuminated when considering the contrast to municipal and other international bodies where such double hatting would not be accepted. This thesis builds on the concept of double hatting and presents an additional double hat score – where I quantify a law firm's role as representing both claimants and respondents. While Sands and Behn et al. consider parallel double hatting, where an arbitrator at the same time engages in two roles, I will in this study include both sequential and parallel double hatting.

In non-ISDS circumstances, such as municipal courts or international commercial arbitration, representing both type of parties is frequent and unproblematic. As long as firms adhere to commonly prescribed rules regarding conflict of interest, the pool of clients is large enough that law firms avoid any appearance of impropriety. The ISDS system, however, is unique in the way that the pool of respondents is practically limited to the roughly 180 states that are signatories to investment treaties with ISDS provisions.[126] Parties have indirectly identified this limitation in several cases, where arbitrators' multiple involvement with the same state has been used as reasons for challenge.[127] Approximately 132 respondent states have been involved in ISDS cases with 28 states being sued more than 10 times.[128] Given the small number of states, close relationships between respondents and firms appear to be far more frequent than those

[123] Sands (2013), See also Ziade (2009)
[124] Behn, et al. (2017)
[125] Ibid.
[126] Based on data from UNCTAD BITs (2017)
[127] See section 4.4.5
[128] See table 1 and section 5.1

between claimants and firms.[129] This may create incentives for law firms to utilise more of their network capital on states that give them repeat business, rather than claimants who rarely litigate more than one case.

With a few exceptions, the top law firms perform services for both claimants and respondents in the ISDS system. In order to rank the firms, I have in Table 1 assigned a score of 0 to 1 – where 0 means that they only historically represent one side and 1 means that they represent both sides equally.[130] The average score of the top 10 law firms (ranked by number of cases) in the listing is 0.51 (compared to 0.35 average in the top 100) – with only one law firm having no crossover at all. In other words, most law firms express a preference toward, but do not exclusively handle, claimants or respondents. The fact that many firms represent both sides may partly be explained by the prevalence of UK barrister chambers and Global 100 law firms in the top list. Most of these have multiple and more or less independent offices and partners, typically granting partners great autonomy to choose their own clients. However, the independent partners will still be part of the same entity – the firm – aggregating their experience back into their company.

The data thus indicate that on average, the top law firms to some extent favour either claimant or respondent clients, however the extent of double hatting is significant. Considering the legal frameworks regulating conflict of interest (4.2), the fact that some law firms represent both claimants and respondents would probably only in the most severe instances result in violation. However, I argue that if one is to take seriously Sands' argument that changing hats for an arbitrator might be difficult,[131] it is worth pursuing whether law firms' allegiance, given their size and the number of other ISDS actors they interact with, could potentially create room for conflict of interest issues. In other words, it is worth to at least explore whether sequential double hatting may potentially be problematic for law firms as well as for individuals. And there is a second element to this issue, namely how many distinct states a given law firm represents.

[129] See analysis in 5.3
[130] The score is calculated as absolute distance from the middle, hence one firm only representing claimants and one representing only respondents will result in an average of 0, not 1.
[131] Sands (2013)

5.3 Law Firms and Respondents

The next quantitative analysis is to calculate how many states law firms have represented as respondents in ISDS cases. In line with expectations, *Freshfields Bruckhaus Deringer, White & Case* and *Arnold & Porter*, all among the top 10 law firms that handle the most cases (see table 1), are also the law firms that represent the highest number of states: they have represented 15, 15 and 13 states respectively (Table 2). Aligning this data with the analysis above, we can observe that all ten, with the exception of *Curtis Mallet-Prevost Colt & Mosle*, frequently appear as representatives for claimants in the system as well. The 10 most 'active' firms on the list represent on average 10 different states as respondent in 232 ISDS cases. As we move down the list, it becomes clear that representing multiple states is limited to a fairly small number of firms. Only 26 law firms have represented more than two states, and only 37 have represented more than one. Similar to the previous analysis, the Global 100 law firms are represented by 23 out of these 37 law firms, GAR 100 firms with 5 and Barrister chambers with 3. This prevalence of large firms may again speak to their size, international reputations and prowess. The varied experience of the law firms may in and by itself be a major selling point, as they gather experience from various states' strategies, creating a snowballing effect.

Another intriguing finding is the apparent establishment of 'best friend'-relationships. The data in Table 2 and 3 indicate that certain firms have developed long-term relationships with governments. These include *Curtis Mallet-Prevost Colt & Mosle* who has represented Venezuela in 16 and Turkmenistan in 10 of their cases, *White & Case* representing Peru in 7 and *Matrix Chambers* representing the Czech Republic in 10 cases. These consistent relationships may provide firms with an in-depth understanding and influence on how these states handle ISDS cases, with strong networking effects to senior government officials.

It is commonly assumed that the most prestigious post in an arbitral tribunal is the position of the tribunal chair.[132] The selection of the chairs may occur in one of three primary ways: by parties (or their law firms) agreeing on a chair, by the wing arbitrators together selecting a chair (with or without the parties' subsequent acceptance) or by institutional appointment. For arbitrators who wish to be more frequently appointed as chair, I argue that it would be advantageous to have a reputation with law firms that represent multiple states, as well as multiple claimants, to ensure the largest number of opportunities. If it is the case that arbitrators

[132] Behn, et al. (2017) at 23

form stronger relationships with the firms representing the highest number of states (as data presented next will indicate), the question Sands raised of unconscious biases becomes relevant once more. If an arbitrator is positioning themselves for 'the next job', this might influence their conduct in an existing case.

Law firms that represent multiple governments, especially those with 'best friend'-relationships, may in addition find themselves in situations similar to challenges described in 4.4.5, where a claimant may argue that the involvement of a given law firm and their connections to arbitrators and states with similar issues may be perceived as a conflict of interest.

5.4 States as Law Firms

While states apply numerous managerial strategies when defending themselves against ISDS claims, several have developed in-house teams that are en-par with the top law firms.[133] The reasons are multi-faceted: partly the need for internal and consistent building of experience,[134] and partly the sheer number of cases creates a need for in-government coordination of arguments and strategies.[135] While I include these 'state law firms' in some of this thesis' analyses,[136] I am aware that they have several distinct properties from their commercial counterparts, the most important distinction being that they only serve one client, to which they are largely interchangeable; their home state. The states' organising structure is further distinct by design, typically following a bureaucratic rather than partnership structure, as they are usually financed directly by the state, rather than depending on income from clients.[137]

Rather than considering the 'firms' synonymous with the states they represent, I will in this thesis consider them analogous to law firms. The ministries are highly competent and few in numbers, and similar to commercial firms they continually build their network capital across multiple cases, which they can utilise on behalf of their client. While having only one client may eliminate certain conflicts, their utilisation of network capital in e.g. arbitrator selection illuminates the same type of conflicts that commercial firms encounter.

[133] Lazo (2016) at 569
[134] Ibid.
[135] Ibid.
[136] Notably the network analysis in chapter 6
[137] Lazo (2016) at 570

The state firms are particularly susceptible to two further types of conflicts. First, as has been claimed in multiple cases,[138] their repeat relationships with arbitrators may be as significant as those that private law firms encounter. Second, it has been anecdotally assumed within the ISDS community that members of these state legal teams continue their career in the private sector either as counsel or as arbitrators after leaving the government.[139] Identifying which states have such teams, and to what extent they are being deployed, may therefore be relevant to identify potential conflicts.

Different respondent states seem to pursue different strategies to handle ISDS cases. Argentina and Venezuela are both recipients of a significant number of claims. As we can observe in Table 4, the former primarily use internal counsel, the latter use a mixture of internal counsel and top 25 legal firms. In addition to Argentina, it appears that the US, Australia (partially), Spain (partially), Mexico (partially), Egypt (partially) and Canada use internal government legal teams as their primary litigators. These figures should however be handled with a bit of caution, due to the way documents from the proceedings are provided. While in some cases, all counsel present at hearings are accounted for in documents, others may only present the lead counsel on the case.

The ad hoc nature and complexity of ISDS cases may be the primary hurdle for states that are not frequent recipients of ISDS cases to develop in-house competence. To have a fully-fledged team of specialised lawyers on call when cases are infrequent, may be a challenge to get through public budget processes. In addition, the ISDS system tends to value people with ISDS experience. For low- and middle income states, matching the salaries given by the Global 100 firms may be difficult, and as a result, it may be problematic to retain talented in-house counsel.

5.5 Where Are Law Firms Located?

Beyond the influence of the individual law firms, geographic clustering may provide further insights. Such clustering has been a subject of discussion when it comes to arbitrators.[140] While this has primarily been discussed from the perspective of the system's legitimacy, I argue that geographical location, should be considered within the spectrum of conflict of interest. The link between law firms' locations and conflict of interest may seem strained. However, I argue that

[138] See analysis in section 4.4
[139] See specifically analysis in section 4.4.5
[140] Franck, et al. (2015) at 40

beyond general concerns that may arise by having large regional concentrations, there are a few concrete issues that may lead to conflicts. The first is regional proximity and shared job markets. Job mobility within a city must be expected to be more common than in an international context, which would allow for knowledge to transfer between different actors within the system rather opaquely. Common cities also include common arenas for professional and semi-professional networks and events. As with most of the other empirical studies in this thesis, I do not argue that any one of these are enough for creating conflicts, but seen in conjunction with other the other factors analysed, geographical clustering may be a reason for concern.

When analysing the data in fig. X, three major clusters of law firm locations appear. To account for the issue of incomplete data on counsel, a weighing algorithm based on case presence has been devised.[141] Firms situated in London, Paris and Washington DC are by far the most prevalent actors in the system. This matches well with the general clusters of international law firms.[142] In addition, certain centres of recent disputes, such as Buenos Aires, Caracas and Madrid see a fairly large density.

The map in fig. 1 illustrates how the main hubs slightly favour claimant representation (i.e. Paris with 127 to 100 cases and Washington D.C with 131 to 104 cases). However, an exception is the commercial cities of New York and London where law firms disproportionally represent claimants, with 76 to 46 for the former and 150 to 74 for the latter. When it comes to Argentina, Venezuela and Egypt – all frequent respondent states, and subsequently states that according to my previous analysis have built up experienced internal teams in the government – the map shows that the density of respondent law firms by far outweighs the claimants.[143]

[141] To limit the effect of multiple counsel on one case each, counsel presence is weighted. This entails that for any given case in the database a maximum of one point is awarded to the respondent and one to the claimant. This point is then distributed equally among all registered counsel on that party's side, and added to their assigned location. To illustrate this, a short example: In a hypothetical case, where the claimant was represented by five lawyers from Firm A in London, each will receive 0.2 points that will be added to their location in London. On the respondent's side, there were five lawyers from the government of Argentina, assisted by five from Firm B in Washington D.C. Each lawyer in Buenos Aries will receive 0.1 point, awarding 0.5 points to Buenos Aries, with 0.5 going to Washington D.C. In total 2 points will be awarded for the case. This weighing based on cases gives a sensible insight of different regional locations, despite having varying quality of data for each case.

[142] Faulconbridge, et al. (2008) at 455

[143] Spot checks in the PITAD database indicate that most of the claimant firms listed in these cities co-counsel with a major Anglo-American firm, presumably to provide local legal expertise. A full evaluation of this however is outside the scope of this thesis, but would be an avenue for further research.

The location of the law firms corresponds well with both the location of ICSID hearings[144], and of the location of arbitrators.[145] The strong Anglo-American domination of the law firms involved in ISDS cases may lead to some unfortunate effects. Beyond the public and scholarly criticism of the ISDS system being predominantly lucrative for the western world and negative for the developing world[146], a more subtle issue may emerge. When the majority of counsel on both sides of the dispute are predominantly from law firms based in common-law states, the argumentation and procedural variants may be skewed towards common-law traditions. Such traditions already dominate the commercial world, yet as a system based on bilateral international treaties where only a minority actually practice common law domestically. This raises the concern that both procedural and material law may be interpreted in the light of a legal tradition not intended between the parties of the agreement, but rather superimposed by the law firms arguing the case.

144 ICSID Annual Report (2016) at 41
145 Franck, et al. (2015) at 40
146 e.g. Gottwald (2007), Franck and Wylie (2015) at 478, Franck (2009)

Figure 1- Map displaying weighted location of counsel. See description in supra note 341. Ill: Author.

5.6 Conclusions

The data presented in this section forms a baseline for understanding how significant the law firms have become in the ISDS system. By using case load as a proxy for influence, I demonstrate how a selected set of law firms, clustered geographically in the cities of Washington D.C., New York, Paris and London, have established themselves as elite group within the system. Several of these firms appear to form close relationships with a range of states, representing the same states in multiple cases. Beyond these relationships, I have illustrated how these elite law firms appear be representing both claimants and respondents, creating potential conflict of interest issues. Finally, I have mapped how a limited number of states are creating their own internal legal departments to either replace or augment their dependence on the elite firms.

6 Refining the Perception of Law Firms' Influence Through Network Analysis

Building on the two previous analyses, I will now use network analysis to create a clearer picture of the relationships between arbitrators and law firms. The first analysis investigates the network capital of law firms in relation to the leading arbitrators, while the second explores how top firms and top arbitrators relate to each other.

6.1 Network Ranking of Law Firms and Individuals

Building on studies from the last two decades that offer a sociological perspective on ISDS[147], I will in this analysis explicitly challenge the assumption that arbitrators alone have agency in decision-making within the ISDS system. Most of the cited studies have focused on the arbitrators, based on an underlying assumption that these are the main actors in the structure.

As stated in the state of the art (2.3), both Puig and Behn et al. have conducted network analyses of the individual actors in the ISDS system.[148] In the current enquiry, I have reproduced the analysis from Behn et al., with one modification: I have collated individual counsel into collective nodes representing their associated law firms, to create a top 25 list not only of individuals, but of the *most influential actors, regardless of the actors being individuals or firms.*

6.1.1 Adapting Behn et al.'s Approach

Ranking law firms based on their influence is a tricky matter. As Behn et al. argue, it is necessary to differentiate forms of relationships within the system. I build on the assumption that a certain hierarchy is embedded in the ISDS system.[149] As I am collating multiple individuals into a single abstract entity (i.e. the law firm), a question is how the individuals' scores should be calculated. A particular challenge is the fact that there are large discrepancies in how official documents record the counsel on a given case. While some cases record scores of counsel, others only list lead counsel. To address this bias, I apply a conservative stance where only the most influential counsel in each case from each firm is counted. Additionally, it

[147] e.g. Puig (2014), St. John, et al. (2017), Behn, et al. (2017), Dezalay and Garth (1996)
[148] Puig (2014), Behn, et al. (2017)
[149] Behn, et al. (2017) at 4

can be argued that by collating individual counsel into collective nodes, we can better consider the aggregated influence and information within the node.

As with the list of top 25 arbitrators from Behn et al., I use multiple metrics to rank the law firms, namely the HITS hub score, PageRank and a weighted number of outgoing ties (see section 3.3]). Each of the three variables measure the network influence in slightly different ways. The weighted number of outgoing ties is the most conservative measure, taking only first-degree interactions weighted by importance. There is a direct correlation between the number of ties and the number of cases a law firm has been involved in. The two former scores however take the whole network into account, estimating the importance of the nodes' relations not only to their closest neighbour, but to the network as a whole.

Crafting such a ranking encompasses some trade-offs regarding accuracy at the individual level. Nonetheless I argue that this is offset by an improved overall perception of the system by seeing law firms as an aggregate, rather than unrelated individuals.

6.1.2 Results: Top 25 Most Influential Actors in the ISDS System

After analysing both arbitrators and the collated law firms in the ISDS system, Table 5 presents an alternate ranking for the most influential actors in the system. The list includes six firms, two government ministries and seventeen individuals. Sixteen of the individuals are arbitrators, while one works primarily as a tribunal secretary. The law firms/ government ministries on the top 25 list are: *Freshfields Bruckhaus Deringer, King & Spalding, White & Case, the Government Ministry of Argentina, Arnold & Porter, the Government Ministry of Venezuela, Foley Hoag, and Shearman & Sterling.*

Several results prompt further comment. First, the influence, i.e. the network capital, of the top law firms is comparable to the top arbitrators. While the firms and government ministries do not rank at the very top of the list, their continued presence throughout indicates that their influence is en-par with the leading arbitrators. Second, the rankings correlate with the findings in the previous section. The firms are based in London, New York or Washington, D.C., they work for both claimants and respondents, and all have a significant number of cases. Furthermore, all the top-ranked firms are on the GAR 100 or Global 100 lists, indicating that the super-elite firms are procuring significant influence in the ISDS system. Third, the two government ministries, Argentina and Venezuela, are both frequent litigants. Consequently,

these states have arguably been able to acquire significant network influence by internalising large parts of their litigation teams.

Finally, while arbitrators populate the top of the list, when we compare the results to Behn et al.'s list, there are internal shifts in the ranking of the arbitrators' influence. Brigitte Stern is in my calculation the most influential actor in the system, improving her rank from third to first place. Kauffman-Kohler's influence is slightly reduced from first to second. In general, arbitrators that frequently work with the most influential firms tend to improve their rankings compared to other arbitrators, a point I will develop further below.

I argue that the results presented here constitute a useful and alternative perspective to counting individual counsel. First, it considers the aggregate of the internal relationships within a firm, where internal redistribution of influence must be expected to be relatively accessible. Second, it challenges a tribunal's perception that relationships should merely be considered on an individual-to-individual basis, rather than recognising that firms can to some extent have inherent agency beyond the sum of the individuals that form them.

This analysis should however be considered as an addition to, rather than a replacement of, Behn et al.'s work. By observing the rankings together, we can see how the inclusion of law firms as separate entities, shifts and nuances the results. Seeing the ISDS system from both an individual and an institutional perspective allows us to observe a more complex network of influence, which is not being sufficiently addressed in the current legal discourse.

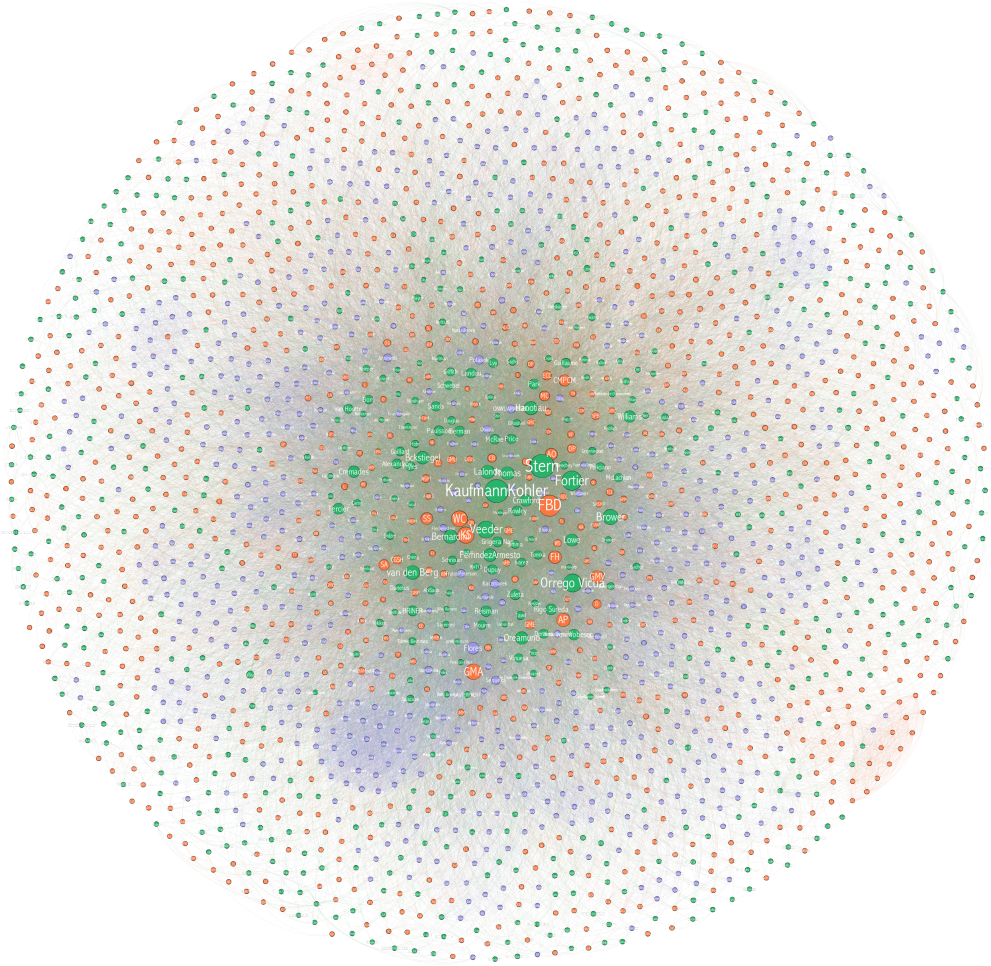

Figure 2 – Visualisation of the all actors in the ISDS network. The size of the nodes reflect the HITS score in table 5. Green nodes represent arbitrators, orange law firms, and purple others. Ill: Author.

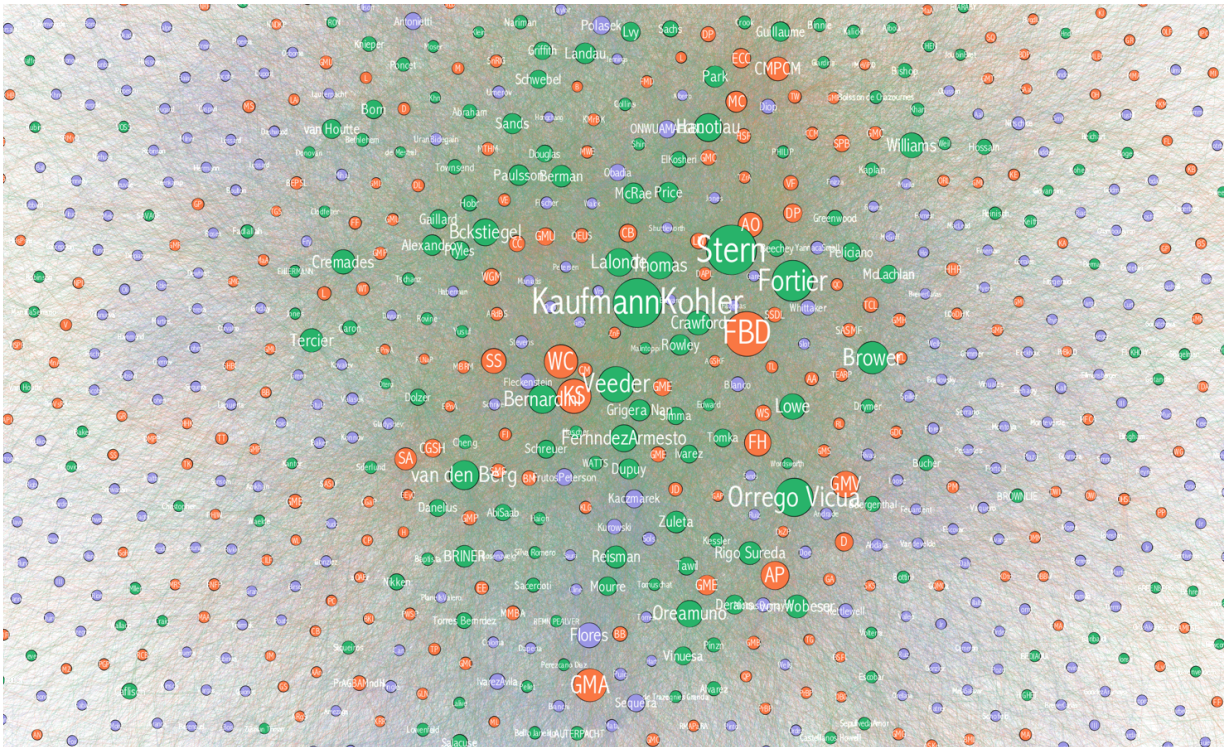

Figure 3 – Crop of Figure 2 core. Ill: Author.

6.2 The Relationships Between the Law Firms and Arbitrators

In several cases, repeat appointments have been one of the underlying reasons for why arbitrators were challenged.[150] In most cases, the concern related to arbitrators being repeatedly appointed by the same party. I will in the following analysis investigate whether law firms form close relationships with certain arbitrators by repeatedly selecting the same individuals.

While there are several legitimate and well-founded reasons for law firms re-using known arbitrators, including knowing the arbitrators' quality of work, their position on issues, personal chemistry, work ethic and so forth, I argue that there is a concern that frequent interactions may create conscious and unconscious allegiances, arbitrator bias, increased leniency and sympathy, or antipathies against other actors or opinions.

6.2.1 Direct Reappointments

In table 6 I have analysed all direct repeat appointments (i.e. wing arbitrator) by the top 25 law firms. The table is sorted by the number of cases per law firm, and provide the average number of reappointments for the firm and the three most frequently reappointed arbitrators. The sorting of this table is equal to that in section 5.1.

Two results from this analysis deserve further discussion. First, the average number of reappointments, while not insignificant, is still fairly low. At an average of 1.38 appointments and with a max of 2.15, firms are to an extent varying their selection of arbitrators. Yet, when we consider the most frequent reappointments, a different picture emerges. The top firms reappoint the same arbitrators up to six times. While six re-appointments of the same arbitrator for the same firm may not necessarily constitute an inappropriately close relationship, I argue that given the duration, scale and financial benefits such appointments award, it does warrant further discussion.

It should be noted that certain arbitrators from the top of Behn et al.'s top 25 list occur frequently in this analysis. The most frequently used and reappointed arbitrator appears to be Brigitte Stern. Other frequent appearances include J. Christopher Thomas, L. Yves Fortier and Gabrielle Kaufmann-Kohler.

[150] See section 4.4

6.2.2 Indirect Reappointments

The analysis in table 7 display the same group of firms, but addresses the appointment of chairs. This category is primarily made up of appointments where the parties agree on chair selection, but also includes a limited number of appointments where the institutions or wing arbitrators have made or suggested a choice for chair. The selection of arbitrators is slightly more varied for this group, with a result of 1.25 (i.e. each arbitrator is indirectly reappointed 1.25 times by the same law firm on average). The maximum number of repeat appointments is also lower than in the direct appointments, reaching a ceiling at four. As with the previous analysis we see many actors from the top 25 list, including L. Yves Fortier, V.V. Veeder, James Crawford and Gabrielle Kauffmann-Kohler.

6.2.3 Government Ministries and Reappointment

In Table 8 and 9 I present similar data for the top 10 government ministries. The government ministries are slightly more prone to reappointments with an average of 1.49 (with a max of 2) for direct and 1.29 (with a max of 1.67) for chair appointments. Similar to the private firms, governments reappoint the same arbitrator six times when appointing directly, but surpass private firms with six chair reappointments (compared to four). This result is slightly surprising, as one might expect private law firms to be more aggressive when it comes to creating and maintaining close relationships.

6.2.4 The Relationship between Top 25 Arbitrators and Top 25 Law Firms

Finally, I have explored what happens when we consider the relationship between the top 25 law firms and the top 25 arbitrators (Table 10). First, I have examined the *share of appointments* assigned by the firms to the arbitrators. The top 25 law firms assign on average 41% of their direct arbitral appointments (i.e., wing arbitrators) to top 25 arbitrators. A similar pattern is present with indirect appointments, where 40% of arbitral appointments on average is assigned to the top 25 arbitrators. Thus, there seems to be strong trend of law firms preferring top 25 arbitrators for their tribunals.

Second, I have considered the *number of arbitrators* that have received appointments by each of the top 25 firms. On average, the firms either directly or indirectly appointed or approved 14 of the top 25 most influential arbitrators. The top five firms have worked with 20 of the 25 arbitrators; while the leading firm on the list, *Freshfields Bruckaus Deringer* alone has been involved in appointing for 22 of the top 25 arbitrators. While this number must be seen in the

context of the number of cases these firms are involved in – having more cases naturally lead to a greater use of arbitrators in general – it is clear from the data above that the larger firms prefer establishing relationships with elite arbitrators.

6.3 Conclusions

With these analyses in mind, three clear patterns emerge. First, the network analyses indicate strong and consistent relationships between the leading law firms/states and the top 25 arbitrators in the ISDS system. Second, state and private actors seem to be operating under the same pattern. Third, each of the leading law firms have contributed to the appointment – and hence contributed to the financial interest – of up to 80% of the top 25 arbitrators.

When I identified the top 25 influential agents in section 6.1, I noted that arbitrators who frequently work with the most influential law firms, tend to improve their rankings compared to other arbitrators. The cause for this is in part the model itself, as arbitrators obtain fewer connections when all counsel are collated into single law firm entities. However, actors working with influential firms may also benefit from the firms' collective network capital. This observation can be transferred to the present discussion: the top 25 firms and the top 25 arbitrators to some extent form close relationships; the benefits of which I will now turn to explore in the discussion.

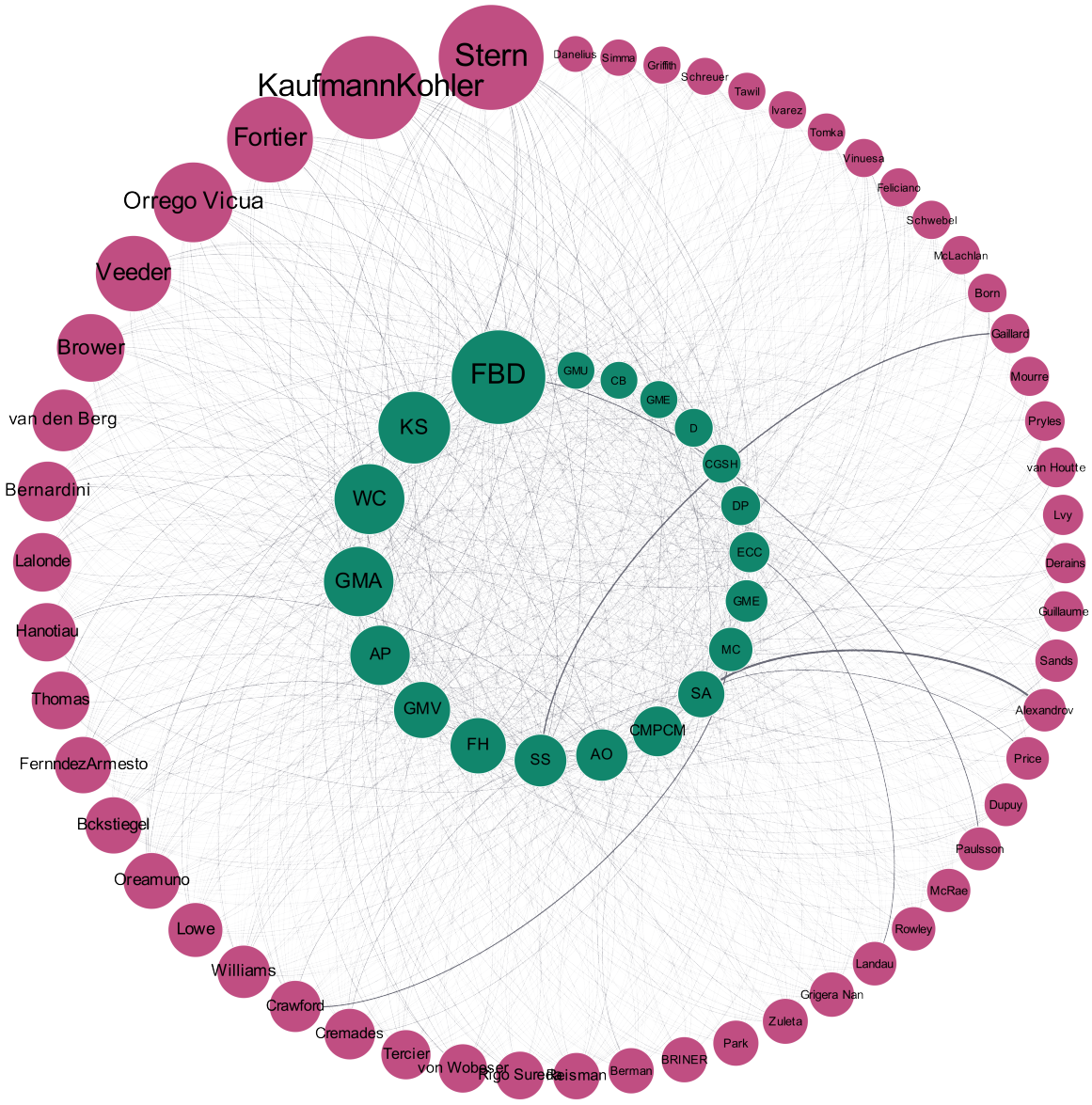

Figure 4 – Visualisation of relationships between top arbitrators (purple) and law firms (green). The size of the nodes reflects the HITS score in table 5. Ill: Author

7 Discussion: Grand Old Men – And Their Friends at the Firm?

The aim of this thesis is to discuss and expand on the suggested hegemony of the 'grand old ladies and gents' of the ISDS system. Through empirical and network analyses, I have throughout this thesis implicitly questioned whether the correct phrase should be 'grand old ladies and gents – and their friends at the firm'.

In the qualitative analysis, I explored the brevity of regulations on law firms and the relationships they cultivate with arbitrators. I highlighted the substantial threshold that such relationships must meet to be perceived as conflicts of interest, and how tribunals address individual connections while regulation on firms-arbitrator relations are nearly absent. The consideration of law firms appears largely overlooked in the drafting of regulations, and more surprisingly, does not seem to be the subject of any substantial corpus of challenges.

In the quantitative analysis, I illustrated how a small group of elite law firms have captured a large chunk of the ISDS cases. Further, I confirmed that these firms are geographically clustered, and that they represent both claimants and respondents. I also documented how a small group of states may be creating their own legal departments in response to increasing caseloads. Finally, the network analysis showed how the law firms have a central position in the ISDS network, and how they build strong relationships with the leading arbitrators.

Among the many results from the analyses, each and every finding cannot be discussed in detail. I will here draw out two larger issues that will be the subject of in-depth discussion. First, I explore how network capital may elevate law firms to a position of de-facto gatekeepers, with power to control the relationships within the ISDS system. Second, I apply the results from the network- and empirical analyses to shed light on how the influential actors appear to be reproduce and even cement their influence in the system. Ultimately, I will discuss two future strategies to remedy the potential conflict of interest issues: remedies within the current legal framework, and proposed restructurings of the ISDS system.

7.1 Access to Gatekeepers

Previous studies of social and network capital in the arbitration world argue that individuals with a higher capital may have greater influence on tribunals.[151] This presumes that an arbitrator with higher social capital can draw on this capital in the arbitration, as one of several factors influencing the process. Building on this premise, it would be strategic for a party to select a wing arbitrator with a higher capital than the chair and opposite wing arbitrator. If we accept the premise that arbitrator selection is a key component of success in arbitration; does this shape how clients are able to access certain arbitrators; and if so, does this make law firms the gatekeepers of the ISDS system?

In practice, achieving an advantage through arbitrator selection require two things: first, the party needs sufficient knowledge of each arbitrator's network and social capital, and second, it requires access to a wing arbitrator from Behn et al.'s top 25 list. For both issues, the party's best strategy would arguably be to go through a top 25 law firm. Consequently, I argue that the top law firms have uniquely positioned themselves as gatekeepers in the ISDS system.

The basic trait that allow the top firms to become gatekeepers, is their knowledge of the arbitrators and the system. Previous research provide insight into arbitrator selection[152], but the academic discourse is likely to be less accessible to infrequent users of the system. Therefore, the ability to select the 'right' arbitrator is a key asset of top law firms. The empirical and network analyses demonstrate how top firms are uniquely situated to provide such guidance. The analysis in 6.2 show how the top firms have first-hand experience with the vast majority of top arbitrators, and in sections 5.1 and 5.2 how the top firms handle numerous cases both as claimants and respondents within the ISDS system, i.e. 'double hatting', thus building unique expertise. In the analysis in section 6.2, I additionally found that the top law firms selected top 25 arbitrators for almost 40% of their appointments (out of an available pool of at least 629 possible arbitrators). Furthermore, I showed how several arbitrators are awarded multiple appointments by the same law firm.

The absence of successful challenges indicates that these relationships, at least as perceived by the tribunals, do not cross the threshold for impropriety. On one hand, the relationships between

[151] expanding on the works of Dezalay and Garth (1996) and Puig (2014).
[152] Dezalay and Garth (1996), Schultz and Kovacs (2012), Puig (2014), St. John, et al. (2017), Behn, et al. (2017).

firms and arbitrators may be motivated by innocuous reasons such as shared experience; a certain level of trust; and strong working relationships. On the other hand, given the arbitrators' time constraints as well as their existing relationships with firms, arbitrators may choose to almost exclusively work with firms they have experience with, thus cementing these firms as the arbitrators' gate keepers.[153]

In the following section, I continue this discussion, with a focus on how these firms appear to be complicit in, and benefit from, the closed loop-nature of the ISDS system.

7.2 Closed Loops

In their working paper, St. John et al. illustrate that the selection of arbitrators is significantly limited by historical selection bias. Each year only 11% of arbitral appointments are awarded to new entrants, while the remaining 89% are awarded to individuals who have had at least one previous arbitral appointment.[154] St. John et al. see this as a hurdle for gender equality within the system. The article hypothesises that unless the system undergoes fundamental structural changes, gender equality will not be achieved this century. The 'closed loop', i.e. self-electing, self-reproducing nature of the system, is hence a frequent item for criticism and is reflected by descriptions of the system as 'an old boys club' or 'club for rich white men'. When considering St. John et al.'s argument in light of the results of this thesis, I argue that the self-reproducing phenomenon does not apply solely to arbitrators, but describes the system in general.

If we are to frame this in terms of network analysis, we can observe an interesting effect: for every appointment given to a top 25 arbitrator, several ties are added to this arbitrator's node. An extra tie is added between the law firm and the arbitrator; between the arbitrator and the co-arbitrators; between the arbitrator and the client; between the arbitrator and the tribunal secretary; and the arbitrator and any given witnesses. In turn these connections give the arbitrator further network capital. This network capital is then aggregated back into the law firm. An avenue for further research would be to apply network analysis to determine how law firms may benefit not only from their direct connections to arbitrators, but how this may give them indirect access to, influence over, and knowledge of the remaining network.

[153] Unfortunately, there is no data available on how often or why a top 25 arbitrator deny appointments. A study of such rejections could be a promising avenue of future research that may increase our understanding of the extent that law firms wield their influence.
[154] St. John, et al. (2017)

This ‘closed loop’ phenomenon is further reflected in the distribution of cases between the law firms. As a human services business, law firms typically market themselves on expertise, experience and reputation (the latter being largely analogous to network capital). As law firms make gains in these areas, clients have stronger incentives to select these firms. This again gives the firm more ties into the network. This phenomenon is well illustrated in ILL 2 and 3 where we can see that the top firms form a core at the centre of the network together with the leading arbitrators.

To summarise, we can describe the trajectory of the closed loop in the following manner:

1) Top law firms appoint top 25 arbitrators, thereby strengthening these arbitrators’ network influence;
2) In turn, making these arbitrators more attractive to clients;
3) This again exponentially increases the ties of a certain arbitrator, allowing the arbitrator further network capital; and
4) The arbitrators’ increased network capital aggregates back into the law firm, making them more desirable for clients compared to firms with less network capital

In other words, *the closed loop is continually increasing the influence of law firms in the ISDS system*.

7.3 Alternatives and Remedies?

The objective of this thesis was in the introduction stated in this manner: first, *analyse the extent to which law firms can influence and come into potential conflict with arbitrators in the ISDS system, especially through arbitrator selection processes*; and second*, to analyse how effectively the current conflict of interest rules protect against conflicts between arbitrators and law firms and what can be done to reform these rules to protect the ISDS system against such influence*. This has proved to be a challenging task, partly due to the vague formulation of the rules, partly because challenges due to law firm influence seem largely absent from case law. I have argued that this absence is not a result of an absence of conflicts, but rather a result of a high threshold and a system of rules that were not designed to address the influence of law firms. As I have argued throughout the analysis, law firms’ influence within the system is

significant and widespread. I have further argued that this influence appears to have structural causes and consequences.

While I am not arguing that the close-knitted relationships between law firms and arbitrators is necessarily unethical in nature, I do claim that it is problematic that the issue is not comprehensively addressed in current discourse. Additionally, the fact that parties challenge arbitrators on the grounds of their close relationships with counsel, reveals a dissonance between current legislation and the perception among the actors in the ISDS system (cf. 4.4). In many cases, the number of connections that directly or indirectly entangle law firms and arbitrators may appear incidental to the individual arbitrator, but nonetheless, mechanisms should arguably be established to ensure disclosure.

Consequently, I will now explore two alternative paths to protect the ISDS system from conflict of interest issues related to law firms: first I will discuss the possible remedies within the current legal framework, and second I will discuss various structural remedies proposed by scholars to address the challenges of conflicts in the ISDS.

7.3.1 Alternatives within the Current Legal Framework

In the case law section (4.4) I discussed the arbitrator challenge in Universal Compression v Venezuela[155]. In response to a challenge regarding a relationship between arbitrator and counsel, the tribunal advises the challenged arbitrator to be vigilant in his disclosure. The tribunal encourages an 'abundance of caution' when listing possible conflicts. An abundance of caution may be an efficient tool to address conflicts of interest caused by law firms. As ISDS relies on party appointments, and given that parties to various extent have an influence over the choice of chair, comprehensive disclosure may allow parties to make informed choices, and identify possible conflicts before approving an arbitrator. For this to be effective, parties will need to have substantial information about the arbitrators' professional history. From several instances in the case law, we can observe how arbitrators fail to disclose potential issues as they do not consider them relevant to the case at hand.

Thus, the results from this thesis' analyses leave us with a paradox: conceivably, many of the factors identified, i.e. the indirect entanglements, frequent reappointments, the double hatting

[155] Universal Compression v. Venezuela (2011) at 31

and the selection bias, could warrant challenges to arbitrators based on their affiliation with law firms, and yet very few are present in the case law. Why are there so few challenges on the grounds of relationships between law firms and arbitrators? Perhaps the explanation may be that the rules focus on individual connections; blurring less clear conflicts that require more comprehensive mapping through data-driven approaches? Another possibility, although it must remain conjecture, is that law firms are highly aware of these issues, but as they are all vulnerable to similar challenges, they do not want to create costly precedence that may work against them in future cases. Whichever explanation is the right one, clients are the ones who bear the consequences of these potential conflicts of interest. To remedy this, I argue that parties need to have comprehensive information made available to them at the early stages of the arbitral procedure.

I propose that this problem needs to be solved as a cooperation between academia and the other actors in the ISDS system. Works by Puig and Behn et al. provide helpful tools for parties to identify possible conflicts.[156] The PITAD database, which will be made public this fall, will provide parties with a potential tool for understanding the network capital of any given arbitrator or law firm, and help identifying the links between them. Several of the software tools that I have developed for this master thesis which will form part of the public version of PITAD, and may further be of use for parties and scholars. However, these data and tools are unfortunately limited by only including publicly available data.

The arbitral institutions, the law firms and the arbitrators themselves may here make significant contributions. A remedy to potential conflict of interest issues would be for the arbitral institutions such as ICSID, ICC, LCIA, SCC and PCA to require arbitrators to provide lists of their professional interactions and relations. Institutions could require such lists to be comprehensive, and not limited to the arbitration at hand. Institutions may then either establish common infrastructure for analysis, in similar fashion to the PITAD database, or allow researchers direct access to the data. These tools could then be made available to the parties.

Of course, there are significant challenges with such a proposal. A primary problem is that confidentiality has been a key component of arbitration. A second is the question of scope. As both arbitrators and law firms frequently handle both ISDS arbitration and commercial

[156] Puig (2014), Behn, et al. (2017)

arbitrations, significant relationships may form outside of the ISDS system, and outside the control of the arbitral institutions.[157] Again, disclosure is perhaps the key, and to encourage disclosure, the rules could be altered so that a failure to disclose any relevant matter, regardless of subjective perception of importance, would be grounds for challenge.

The advantage of such rules is that they can be implemented within the frameworks of the arbitral tribunals, and would not require the re-negotiation of treaties, or that parties must – as with the IBA rules – agree to accept them in advance. Moreover, a combination of such rules and an instrument resembling the IBA guidelines on conflict of interest could potentially aid in the discovery and handling of conflict of interest issues. While the IBA guidelines contain useful provisions on identification between arbitrator and their law firms (i.e. GS-6a[158]), the flexibility it allows arbitrators in its 'orange' and 'green' categories where an arbitrator is given discretion to choose what to disclose, may be a hindrance to unearthing conflicts. The guidelines treatment of law firms and other relations under the green list, would need to be moved up to the orange- or waivable red list for such a system to operate optimally.

7.3.2 Restructuring the System

Implementing an 'abundance of caution' into arbitrator selection with the data tools described above, would go a long way in levelling the playing field within the ISDS system. However, as multiple scholars have argued, the system appears to have an inherit bias for historical ISDS experience[159], thus such changes would most likely have limited effect in reducing conflict of interest. Throughout the years, many academics as well as members of the ISDS system have suggested structural reforms to address both conflict of interest issues, as well as legitimacy concerns in general.[160] These proposals draw in two distinct directions: the first suggests alterations to the organisation and assignment of arbitral tribunals; the second proposes to replace the arbitration system with a standing court.

The first category includes some common features: either reducing the number of arbitrators to *one*, agreed upon by the parties, or letting an institution assign all arbitrators. Each suggestion

[157] Puig (2014) at 402
[158] IBA Guidelines on Conflicts of Interest (2014) at 13
[159] e.g. St. John, et al. (2017), Puig (2016) at 42
[160] e.g. Puig (2016), Paulsson (2009), van den Berg (2015)

has received significant debate in the academic literature, and I refer to these for a general overview of pros and cons of each solution.[161]

To limit the number of arbitrators to one would conceivably be less efficient in reducing the firms' influence. When both parties have to agree, there is a distinct possibility that either the party with the best information would prevail, or that the parties may compromise on the lowest common denominator. The reduction in number of arbitrators would in addition mean that arbitrators would perhaps need to work harder to 'win' appointments from the law firms.

Moving the arbitral appointment away from the parties (and hence the firms) to an arbitral institution, may be a more efficient tool for reducing firms' influence on the system. In order to be effective, arbitral institutions would need to have data tools like the ones described above. This would allow institutions to select a tribunal of arbitrators that does not have significant network links to either party, or their respective law firms. In addition, such a proposal would need to include stricter guidelines for conflict of interest, as the system would progress from a party controlled- to an institutional system.

Another suggestion is Puig's proposal of blind arbitrators.[162] In this reform, arbitrators would not know who appointed them. Unfortunately, such a model would be hard to reconcile with the current study. Assuming that an arbitrator has a reflexive understanding of their own network, and that the parties take network into consideration when choosing the arbitrator, it would not be difficult for an arbitrator to deduce the appointor.[163]

This leads us the second major category of restructuring suggestions: proposals for centralised standing courts. The majority of these proposals suggest creating a standing tribunal similar to the international courts.[164] Skipping past the significant legal and practical challenges the establishment of such a court entails, I will briefly discuss three issues related to this thesis' findings. First, if a court of this type was modelled on existing international courts, sovereign states would be responsible for nominating judges. While perhaps subject to a more democratic process than party nomination, the result would be that while the law firms' role as gatekeepers

[161] e.g. Puig (2016) at 47, Paulsson (2009), Kalicki and Joubin-Bret (2015)
[162] Puig (2016)
[163] Puig recognises and comments on this issue in his suggestion (ibid.)
[164] e.g. Van Harten and Van Harten (2007) Chapter 7, EU Concept Paper (2015)

would diminish, this role would merely be transferred to the states instead. Considering that states are the primary respondents, this could be a source of imbalance in the system.[165] Second, such a body would have to show significant creativity to avoid cementing the current state of the system. If the hypothetical court appoints the current lead arbitrators – who undeniably are the most experienced – it would also cement established relationships. Third, to avoid conflicts of interest, the court would need the same compressive understanding of network capital, and the connections between proposed judges and other actors in the network.

The fact that over the last three decades, a stream of proposals for reform have yet to make any substantial impact on the ISDS system, illustrates how complex changing a global, decentralised system can be. Further research, as well as public dissemination of the networks and actors in the system, may therefore be the best available tool to make parties aware of the pitfalls of arbitrator selection. This awareness may then foster a culture embracing an 'abundance of caution', which will hopefully create a fairer system where network capital is of less significance.

[165] How significant such an imbalance actually will be is questionable. In a study Voeten (2008) finds that ECHR judges are not bias in favour of their nominating states.

8 Concluding Remarks: An Abundance of Caution

In a personal statement made to a faculty member at the University of Oslo, a senior arbitrator expressing their dissatisfaction with a recent interview on the ISDS system uttered '-We lost the media war!'. This statement reflects the vast amounts of criticism that the system has received by the media, public instances, and academia over the last decades. The impression of a system with 'grand old men' and backroom dealings has been prevailing. While the system's critics are often loud, the system itself has many defenders, and the ISDS mechanism is incorporated in most new trade deals. The findings in this thesis may prove to support some of the critical viewpoints. In many ways, the ISDS system functions like a closed loop system; there are many entanglements between its key actors; and there is a blurring of lines between different roles. The data presented in this thesis indicate that law firms are significant contributors to this closed-loop system. By comparing the sparse legal regulation addressing the role of law firms in ISDS, with data-driven, quantitative approaches based on the massive dataset in the PITAD database; this thesis has offered several novel insights into the significance of law firms in the ISDS system. The study has developed new data-tools that will be made available for scholars and the public at large in the fall of 2017. The thesis provides original analyses mapping the law firms that handle most cases, and the firms representing the highest number of states, the extent of 'double hatting', and the geographical clustering of law firms. Through network analysis this study offered an alternate ranking for the most influential actors in the system, including law firms. Moreover, I showed through various calculations that the top arbitrators and elite law firms forms strong entwinements and relationships, leading to a system where the law firms become the gatekeepers of the top arbitrators, creating a 'closed loop' that continually increases the influence of law firms in the ISDS system.

The perhaps most significant result of this thesis is the lack of sufficient thought and effort to address these issues. The network analysis makes it clear that the entwinements between the system's most influential actors, their being arbitrators or law firms, are significant. However, the tribunals, as well as both defendants and claimants, seem to overlook the challenges such interactions may propose. The limited regulation that exists, appear to demand a high threshold of impropriety. The lack of legal consideration of less transparent forms for networks and allegiances within the system poses a true challenge to the legitimacy and future of the ISDS mechanism.

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LCIA Arbitration Rules (2014)	LCIA Arbitration Rules, London Court of International Arbitration
PCA Arbitration Rules (2012)	PCA Arbitration Rules, Permanent Court of Arbitration
SCC Arbitration Rules (2017)	SCC Arbitration Rules, Stockholm Chamber of Commerce
UNICITRAL Arbitration Rules (2010)	UNICITRAL Arbitration Rules, United Nations Commission on International Trade Law

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10 List of Figures

11 Appendix

11.1 Table 1

Table of top 25 law firms sorted by number of cases.

Rank	Firm name	Firm type	For claimant	For respondent	Total	Double Hat Ratio
1	Freshfields Bruckhaus Deringer	GLOBAL 100	60	25	**85**	0,59
2	White & Case	GLOBAL 100	25	**46**	71	0,7
3	King & Spalding	GLOBAL 100	**64**	2	66	0,06
4	Allen & Overy	GLOBAL 100	34	12	46	0,52
5	Arnold & Porter	GLOBAL 100	11	32	43	0,51
6	Curtis Mallet-Prevost Colt & Mosle	GLOBAL 100	1	42	43	0,05
7	Shearman & Sterling	GLOBAL 100	24	17	41	0,83
8	Matrix Chambers	Barrister Chambers	12	23	35	0,69
9	Foley Hoag	GAR 100	4	31	35	0,23
10	Sidley Austin	GLOBAL 100	17	18	35	**0,97**
11	Debevoise & Plimpton	GLOBAL 100	23	5	28	0,36
12	Essex Court Chambers	Barrister Chambers	14	12	26	0,92
13	Derains & Gharavi	GAR 100	17	7	24	0,58
14	Covington & Burling	GLOBAL 100	20	3	23	0,26
15	Cleary Gottlieb Steen & Hamilton	GLOBAL 100	6	17	23	0,52
16	Weil Gotshal & Manges	GLOBAL 100	7	15	22	0,64
17	Clifford Chance	GLOBAL 100	17	4	21	0,38
18	Dechert	GLOBAL 100	2	19	21	0,19
19	Todd Weiler	Sole Practitioner - OECD	20	0	20	**0**
20	Latham & Watkins	GLOBAL 100	10	9	19	0,95
21	Baker McKenzie	GLOBAL 100	14	5	19	0,53

Rank	Firm name	Firm type	For claimant	For respondent	Total	Double Hat Ratio
22	DLA Piper	GLOBAL 100	6	12	18	0,67
23	Squire Patton Boggs	GLOBAL 100	3	15	18	0,33
24	Winston & Strawn	GLOBAL 100	6	11	17	0,71
25	Volterra Fietta	GAR 100	13	3	16	0,38

11.2 Table 2

Table of law firms and the states that they have represented. Top 25 sorted by number of states represented.

Firm	Firm type	Firm rank (Table 1)	Number of States Represented	Total Cases for States	National governments represented
Freshfields Bruckhaus Deringer	GLOBAL 100	1	15	24	Guatemala: 3, Grenada: 3, Turkey: 3, Kenya: 2, Egypt: 2, Romania: 2, Latvia: 1, Cambodia: 1, United States: 1, Saint Kitts And Nevis: 1, South Africa: 1, Malaysia: 1, Tanzania, United Republic Of: 1, Lithuania: 1, Pakistan: 1
White & Case	GLOBAL 100	3	15	44	Peru: 7, Uzbekistan: 6, Georgia: 5, Philippines: 4, Ukraine: 4, Bulgaria: 4, Indonesia: 3, Romania: 3, Chile: 2, Thailand: 1, Russian Federation: 1, Costa Rica: 1, Sri Lanka: 1, Jordan: 1, United States: 1
Arnold & Porter	GLOBAL 100	5	13	26	Venezuela: 7, Chile: 4, Dominican Republic: 2, Costa Rica: 2, Korea, Democratic People's Republic Of: 2, Panama: 2, Kyrgyzstan: 1, El Salvador: 1, Ecuador: 1, Slovakia: 1, Bulgaria: 1, Guatemala: 1, Argentina: 1
Matrix Chambers	Barrister Chambers	20	10	21	Czech Republic: 10, Albania: 2, Argentina: 2, Sri Lanka: 1, Bangladesh: 1, United Arab Emirates: 1, Ecuador: 1, Pakistan: 1, Poland: 1, Sudan: 1
Curtis Mallet-Prevost Colt & Mosle	GLOBAL 100	6	9	40	Venezuela: 16, Turkmenistan: 10, India: 4, Kazakhstan: 4, Uganda: 2, Cameroon: 1, Indonesia: 1, Madagascar: 1, Tanzania, United Republic Of: 1
Foley Hoag	GAR 100	7	9	28	Venezuela: 12, Ecuador: 6, Slovakia: 3, El Salvador: 2, Belgium: 1, India: 1, Uruguay: 1, Nicaragua: 1, Ukraine: 1
Essex Court Chambers	Barrister Chambers	23	9	12	Lesotho: 2, Pakistan: 2, Kazakhstan: 2, Albania: 1, Azerbaijan: 1, Sri Lanka: 1, India: 1, Bangladesh: 1, Croatia: 1
DLA Piper	GLOBAL 100	21	8	11	Georgia: 3, Guinea: 2, Hungary: 1, Kenya: 1, Oman: 1, Moldova, Republic Of: 1, Timor-leste: 1, Czech Republic: 1
Allen & Overy	GLOBAL 100	4	7	11	Pakistan: 3, Azerbaijan: 2, United Arab Emirates: 2, Kyrgyzstan: 1, Slovenia: 1, Philippines: 1, Poland: 1
Shearman & Sterling	GLOBAL 100	8	6	16	Egypt: 5, Algeria: 4, Lithuania: 3, Venezuela: 2, Slovakia: 1, Croatia: 1
Cleary Gottlieb Steen & Hamilton	GLOBAL 100	12	6	15	Russian Federation: 8, Greece: 3, Austria: 1, Slovenia: 1, France: 1, Argentina: 1
Lalive	GAR 100	25	5	10	Romania: 4, Turkey: 3, Mauritius: 1, Ecuador: 1, Ukraine: 1
Derains & Gharavi	GAR 100	11	4	4	Turkey: 1, Togo: 1, Sudan: 1, Kazakhstan: 1
Dechert	GLOBAL 100	13	4	11	Ecuador: 7, Czech Republic: 2, Colombia: 1, Georgia: 1

Firm	Firm type	Firm rank (Table 1)	Number of States Represented	Total Cases for States	National governments represented
Squire Patton Boggs	GLOBAL 100	14	4	13	Czech Republic: 8, Ecuador: 2, Slovakia: 2, Croatia: 1
Latham & Watkins	GLOBAL 100	19	4	8	Macedonia, The Former Yugoslav Republic Of: 3, Ecuador: 2, Croatia: 2, Ukraine: 1
Baker McKenzie	GLOBAL 100	27	4	5	Turkey: 2, Hungary: 1, Honduras: 1, Uzbekistan: 1
Winston & Strawn	GLOBAL 100	31	4	8	Ecuador: 4, Kyrgyzstan: 2, Jordan: 1, Romania: 1
Baker Botts	GLOBAL 100	32	4	6	Russian Federation: 3, Ecuador: 1, Indonesia: 1, Slovakia: 1
Eversheds	GLOBAL 100	103	4	5	Pakistan: 2, Slovenia: 1, Yemen: 1, Croatia: 1
David A.Pawlak LLC	Sole Practitioner - OECD	112	4	7	Slovakia: 4, Poland: 1, United States: 1, Ukraine: 1
Sidley Austin	GLOBAL 100	9	3	9	Costa Rica: 5, Turkey: 3, Bulgaria: 1
Debevoise & Plimpton	GLOBAL 100	10	3	4	Russian Federation: 2, Armenia: 1, Uzbekistan: 1
Herbert Smith Freehills	GLOBAL 100	24	3	4	Spain: 2, Ecuador: 1, Indonesia: 1
Hogan Lovells	GLOBAL 100	29	3	5	Venezuela: 3, Panama: 1, Mongolia: 1

11.3 Table 3

Table of states and the law firms that have represented them. Top 25 sorted by number of cases for the state.

Country	Number of cases	Law firms with number of cases
Argentina	80	Government Ministry-AR: 69, Matrix Chambers: 2, Mayer, Brown, Rowe & Maw: 2, Abel Albarracín: 1, Aldo Rodríguez Salas: 1, Arnold & Porter : 1, Chiomenti Studio Legale: 1, Cleary Gottlieb Steen & Hamilton : 1, Estudio Pérez Alati, Grondona, Benites, Arnsten & Martínez de Hoz (h): 1, Giancarlo Spinetta: 1, Hugo Reos: 1, Javier Montoro: 1, Pérez, Alati, Grondona, Benites, Arntsen & Martínez de Hoz: 1
Venezuela	54	Government Ministry-VE: 42, Curtis Mallet-Prevost Colt & Mosle: 16, Foley Hoag: 12, Arnold & Porter : 7, Guglielmino & Asociados: 6, Hogan Lovells: 3, Diego Brian Gosis: 2, Shearman & Sterling : 2, , Loaiza Biggot & Asociados: 1, Torres Darias & Asociados: 1
Egypt	41	Government Ministry-EG: 28, Bredin Prat: 5, Shearman & Sterling : 5, Kosheri, Rashed & Riad: 3, Cleary Gottlieb Steen & Hamilton : 2, Eversheds: 2, Freshfields Bruckhaus Deringer : 2, Hafez: 2, Abdel Raouf Law Firm: 1, Ahmed Medhat: 1, Andres Reiner: 1, Anna Joubin-Bret: 1, Baker McKenzie: 1, Emmanuel Gaillard: 1, Fawzy Mansour: 1, Fulbright & Jaworski: 1, Hassan Baghdadi: 1, Ibrahim M. Refaat: 1, Iskandar Ghattas: 1, Jean-Denis Bredin: 1, Kamal Aboulmagd: 1, Mayer, Brown, Rowe & Maw: 1, Robert Saint-Esteben: 1, Rudolf Dolzer: 1, Thomas H. Webster: 1, Yehia Ezzat: 1
Canada	39	Government Ministry-CA: 19, Donald McRae: 1, Murdoch Martyn: 1
Czech Republic	38	Government Ministry-CZ: 12, Weil Gotshal & Manges : 11, Matrix Chambers: 10, Squire Sanders & Dempsey LLP: 9, Squire Patton Boggs: 8, Clifford Chance : 2, Dechert : 2, Linklaters : 2, Rowan Legal: 2, Weinhold Legal: 2, 20 Essex Street Chambers: 1, DLA Piper : 1, Konecná & Šafár: 1, KŠD Štovícek: 1, Luther: 1, Noerr s.r.o.: 1, Teynier Pic & Associes: 1, Vyroubal Krajhanzl Skolout: 1, Zeiler Partners Rechtsanwälte GmbH: 1
Spain	35	Government Ministry-ES: 32, Herbert Smith Freehills : 2
Poland	33	Government Ministry-PL: 6, Domański Zakrzewski Palinka: 3, Bird & Bird: 2, Boleslaw Fedorowicz: 2, Jamka Sp.K.: 2, Soltysinski Kawecki & Szlezak: 2, Allen & Overy: 1, CMS Cameron McKenna: 1, David A.Pawlak LLC: 1, K&L Gates : 1, Matrix Chambers: 1, Salans LLP: 1
Mexico	33	Government Ministry-MX: 17, Pillsbury Winthrop Shaw Pittman: 5, Thomas & Partners: 5, Matrix Chambers: 2, Borden Ladner Gervais LLP: 1, Shaw Pittman: 1
Ecuador	30	Government Ministry-EC: 21, Dechert : 7, Foley Hoag: 6, Winston & Strawn : 4, Pierre Mayer: 3, Cabezas & Wray Abogados: 2, Latham & Watkins : 2, Squire Patton Boggs: 2, Weil Gotshal & Manges : 2, Arnold & Porter : 1, Baker Botts : 1, Estudio Jurídico Cabezas y Wray: 1, Fabara y Compañia: 1, Herbert Smith Freehills : 1, Huerta Ortega y Asociados: 1, Lalive: 1, Matrix Chambers: 1, Squire Sanders & Dempsey LLP: 1
United States	29	Government Ministry-US: 10, David A.Pawlak LLC: 1, Freshfields Bruckhaus Deringer : 1, White & Case : 1
India	29	Curtis Mallet-Prevost Colt & Mosle: 4, Fox Mandal & Co.: 2, Government Ministry-IN: 2, Amarchand & Mangaldas & Suresh Shroff & Co: 1, Essex Court Chambers: 1, Foley Hoag: 1, Khaitan & Co: 1, Richards Butler: 1
Russian Federation	26	Cleary Gottlieb Steen & Hamilton : 8, Baker Botts : 3, Debevoise & Plimpton: 2, Government Ministry-RU: 1, Granrut Avocats: 1, White & Case : 1

Country	Number of cases	Law firms with number of cases
Ukraine	24	Government Ministry-UA: 13, Grischenko & Partners: 7, Magisters: 5, White & Case : 4, Proxen & Partners: 2, Arzinger: 1, David A.Pawlak LLC: 1, Egorov Puginsky Afanasiev & Partners: 1, Foley Hoag: 1, King & Spalding : 1, King & Wood Mallesons LLP: 1, Lalive: 1, Latham & Watkins : 1, Lexwell & Partners: 1
Peru	22	Government Ministry-PE: 11, Sidley Austin : 9, White & Case : 7, Estudio Echecopar: 6, Estudio Navarro, Ferrero & Pazos: 4, Stephen M. Schwebel: 3, Allen & Overy: 1, BakerHostetler: 1, Rubio Leguia Normand and Partners: 1, Santistevan de Noriega & Asociados: 1
Kazakhstan	21	Reed Smith : 8, Curtis Mallet-Prevost Colt & Mosle: 4, 3 Verulam Buildings: 2, Essex Court Chambers: 2, Government Ministry-KZ: 2, Christopher Harris: 1, Derains & Gharavi: 1, Guglielmo Verdirame: 1, McGuireWoods Kazakhstan LLP: 1, Richards Butler: 1, Simon Olleson: 1, Steiger & Zingermann: 1
Kyrgyzstan	16	Government Ministry-KG: 3, Winston & Strawn : 2, Allen & Overy: 1, Arnold & Porter : 1, Belek Sarymsakov: 1, Indira Satarkulova: 1, King & Wood Mallesons LLP: 1, LeBoeuf, Lamb, Greene & MacRae: 1, Lorenz Law: 1, Michael Wilson & Partners: 1, Salans LLP: 1, Satarov Askarov & Partners: 1, Satarov, Askarov & Partners: 1, Valentina Kharlamova: 1
Turkey	16	Government Ministry-TR: 5, Freshfields Bruckhaus Deringer : 3, Lalive: 3, Sidley Austin : 3, Baker McKenzie: 2, Coşar Avukatlik Bürosu: 2, Akinci Law Office: 1, Coşar Avukatlik Bürosu: 1, Dentons: 1, Derains & Gharavi: 1, Fethi Calik: 1, Kilic & Partners: 1, Kusyeri Hukuk Bürosu: 1, Nixon Peabody LLP: 1, Ozel and Ozel: 1, Paksoy & Co.: 1, Salans LLP: 1, Sanli Law Firm: 1, Stephen M. Schwebel: 1
Romania	15	Government Ministry-RO: 4, Lalive: 4, Leaua & Asociaţii: 4, Tuca Zbârcea & Asociatii: 3, White & Case : 3, Freshfields Bruckhaus Deringer : 2, Bostina Si Asociatii: 1, CMS Cameron McKenna: 1, Diana Croitoru-Anghel: 1, Manuela Sarbu: 1, Muşat & Asociaţii: 1, Nestor Nestor Diculescu Kingston Petersen: 1, S.C.P. Cobuz Si Asociatii: 1, Tanasescu & Asociatii: 1, Winston & Strawn : 1
Hungary	15	Arnold & Porter : 6, Government Ministry-HU: 6, Kende Molnár-Biró Katona: 4, Law Office of Dr. János Katona: 2, Weil Gotshal & Manges : 2, White & Case : 2, Baker McKenzie: 1, BNT Budapest: 1, Bodnár Ügyvédi Iroda Law Firm: 1, Clifford Chance : 1, DLA Piper : 1, Köves & Társai Ügyvédi Iroda: 1, Réczicza White and Case: 1, RRKH: 1, Sarhegyi & Partners Law Firm: 1, Sárhegyi és Társai Law Firm: 1, Siegler Ügyvédi Iroda: 1, Siegler Ügyvédi Iroda/Weil, Gotshal & Manges LLP: 1
Bolivia	15	Government Ministry-BO: 10, Dechert : 8, Foley Hoag: 3, Criales, Urcullo, Freire &Villegas: 1, Crowell & Moring : 1, Gomm & Smith, P.A.: 1, Wayar & von Borries Abogados, S.C.: 1
Slovakia	14	Government Ministry-SK: 7, David A.Pawlak LLC: 4, Foley Hoag: 3, Rowan Legal: 2, Squire Patton Boggs: 2, Squire Sanders & Dempsey LLP: 2, Arnold & Porter : 1, Baker Botts : 1, Cernejova & Hrbek: 1, Government Ministry-PL: 1, KŠD Štovícek: 1, Shearman & Sterling : 1, Skadden Arps Slate Meagher & Flom : 1, Soltysinski Kawecki & Szlezak: 1, Weinhold Legal: 1
Indonesia	13	Government Ministry-ID: 6, White & Case : 3, 12 Gray's Inn Square: 2, KarimSyah Law Firm: 2, 20 Essex Street Chambers: 1, Baker Botts : 1, Curtis Mallet-Prevost Colt & Mosle: 1, DNC Advocates at work: 1, Herbert Smith Freehills : 1, Mahnaz Malik: 1, Rajah & Tann: 1
Georgia	12	White & Case : 5, DLA Piper : 3, Dechert : 1, Dewey & LeBoeuf: 1, Government Ministry-GE: 1, Gvinadze & Partners: 1, Mgaloblishvili, Kipiani, Dzidziguri (MKD): 1, Norton Rose Fulbright: 1
Moldova, Republic Of	12	Government Ministry-MD: 2, ACI Partners: 1, Buruiana & Partners: 1, DLA Piper : 1,
Albania	11	Government Ministry-AL: 7, Derains & Gharavi: 3, Matrix Chambers: 2, 20 Essex Street Chambers: 1, Derains Gharavi Lazareff: 1, Essex Court Chambers: 1, Gowling WLG (UK) LLP: 1, Philippe Sands: 1, Wragge Lawrence Graham & Co: 1

Country	Number of cases	Law firms with number of cases
Turkmenistan	11	Curtis Mallet-Prevost Colt & Mosle: 10, Gürel & Yörüker Law Firm: 5
Pakistan	10	Government Ministry-PK: 5, Allen & Overy: 3, Berwin Leighton Paisner: 2, Ebrahim Hosain: 2, Essex Court Chambers: 2, Eversheds: 2, Umar Bandial & Associates: 2, 12 Gray's Inn Square: 1, ABS & Co: 1, Alain Pellet: 1, Andreas Gledhill: 1, Bhandari, Naqvi & Riaz: 1, Blackstone Chambers: 1, Christopher Greenwood: 1, Eirik Bjørge: 1, Freshfields Bruckhaus Deringer : 1, M/S Kabraji & Talibuddin: 1, Matrix Chambers: 1, Qamar Vardag & Associates: 1, Samdani & Qureshi: 1
Costa Rica	10	Government Ministry-CR: 9, Sidley Austin : 5, Arnold & Porter : 2, Baker Botts : 1, Volterra Fietta: 1, White & Case : 1

11.4 Table 4

Table listing internal vs external counsel. Top 25 sorted by states total number of cases (Table 1)

Country	Cases with external and internal counsel	Cases with external counsel only	Cases with internal counsel only	Unknown
Argentina	6	2	63	9
Venezuela	37	3	5	9
Egypt	20	4	8	9
Canada	2	0	17	20
Czech Republic	11	14	1	12
Spain	1	1	31	2
Poland	7	7	0	19
Mexico	6	0	11	16
Ecuador	18	4	3	5
United States	1	1	9	18
India	2	6	0	21
Russian Federation	0	10	1	15
Ukraine	9	6	4	5
Peru	11	7	1	3
Kazakhstan	2	12	0	7
Kyrgyzstan	2	8	1	5
Turkey	4	10	1	1
Romania	3	8	1	3
Hungary	5	8	1	1
Bolivia	9	1	1	4
Slovakia	8	3	0	3
Indonesia	4	4	2	3
Georgia	1	10	0	1
Moldova, Republic Of	1	1	2	8
Albania	6	2	1	2

11.5 Table 5

Top 25 actors in the ISDS network ranked by HITS (hub).

Rank	Rank Behn et al. (all individuals)	Rank Behn et al. (arbitrators only)	Name	HITS (hub)	PageRank	Type	Degrees out (weighted)
1	3	2	Brigitte Stern	**1,0000**	**0,0084**	Arbitrator	**415 (471)**
2	**1**	**1**	Gabrielle Kaufmann-Kohler	0,9776	0,0054	Arbitrator	297 (416)
3	-	-	Freshfields Bruckhaus Deringer	0,8657	**0,0084**	Law firm	389 (283)
4	2	4	Yves Fortier	0,7724	0,0061	Arbitrator	343 (421)
5	5	6	Francisco Orrego Vicuña	0,7006	0,0045	Arbitrator	237 (285)
6	4	3	V. V. Veeder	0,6486	0,0039	Arbitrator	238 (276)
7	-	-	King & Spalding	0,6055	0,0059	Law firm	298 (214)
8	-	-	White & Case	0,5836	0,0071	Law firm	377 (257)
9	-	-	Government Ministry Argentina	0,5788	0,0056	Government Ministry	235 (207)
10	7	5	Charles Brower	0,5563	0,0044	Arbitrator	274 (263)
11	13	7	Albert Jan van den Berg	0,4850	0,0050	Arbitrator	299 (294)
12	19	14	Piero Bernardini	0,4628	0,0033	Arbitrator	198 (214)
13	-	-	Arnold Porter	0,4579	0,0055	Law firm	291 (190)
14	16	12	Marc Lalonde	0,4478	0,0037	Arbitrator	219 (213)
15	11	8	Bernard Hanotiau	0,4448	0,0042	Arbitrator	247 (251)
16	14	13	J. Christopher Thomas	0,4380	0,0038	Arbitrator	224 (206)
17	22	15	Juan Fernández-Armesto	0,4226	0,0028	Arbitrator	163 (193)
18	15	9	Karl Heinz Bckstiegel	0,4206	0,0037	Arbitrator	208 (231)
19	-	-	Government Ministry Venezuela	0,4184	0,0041	Government Ministry	189 (158)
20	-	21	Rodrigo Oreamuno	0,4162	0,0030	Arbitrator	172 (195)
21	-	-	Foley Hoag	0,4098	0,0044	Law firm	254 (163)
22	24	10	Vaughan Lowe	0,3932	0,0028	Arbitrator	176 (183)
23	-	11	David Williams	0,3753	0,0029	Arbitrator	172 (182)
24	20	-	Gonzalo Flores	0,3696	0,0051	Secretary	283 (164)

Rank	Rank Behn et al. (all individuals)	Rank Behn et al. (arbitrators only)	Name	HITS (hub)	PageRank	Type	Degrees out (weighted)
25	-	-	Shearman Sterling	0,3670	0,0042	Law firm	228 (154)

11.6 Table 6

Table of direct repeat appointments. Top 25 sorted by firms total number of cases.

Name of firm	Type of firm	Number of cases	Average number of reappointments	Most frequently reappointed
Freshfields Bruckhaus Deringer	GLOBAL 100	85	1,57	(5) Gabrielle Kaufmann-Kohler, (4) Yves Fortier, (4) Francisco Orrego Vicuña,
White & Case	GLOBAL 100	71	1,48	(6) Brigitte Stern, (3) Andreas Bucher, (3) Albert Jan van den Berg,
King & Spalding	GLOBAL 100	66	1,68	(4) Charles N. Brower, (4) Piero Bernardini, (4) Horacio A. Grigera Naón,
Allen & Overy	GLOBAL 100	46	1,32	(4) Bernard Hanotiau, (3) John Beechey, (2) William Rowley,
Arnold & Porter	GLOBAL 100	43	1,55	(6) Brigitte Stern, (3) Claus von Wobeser, (2) Christopher Thomas,
Curtis Mallet-Prevost Colt & Mosle	GLOBAL 100	43	1,62	(4) Brigitte Stern, (4) Kamal Hossain, (4) Phillipe Sands,
Shearman & Sterling	GLOBAL 100	41	1,46	(3) Christopher Thomas, (3) Alexis Mourre, (3) Charles Poncet,
Foley Hoag	GAR 100	35	**2,15**	(6) Brigitte Stern, (5) Raúl E. Vinuesa, (4) Phillipe Sands,
Sidley Austin	GLOBAL 100	35	1,73	(5) Bernardo M. Cremades, (3) Gabrielle Kaufmann-Kohler, (3) Andreas F. Lowenfeld,
Matrix Chambers	Barrister Chambers	35	1,38	(3) Yves Fortier, (3) Christopher Thomas, (3) Toby Landau,
Debevoise & Plimpton	GLOBAL 100	28	1,14	(3) Charles N. Brower, (2) David A.R. Williams, (1) Karl-Heinz Böckstiegel,
Essex Court Chambers	Barrister Chambers	26	1,18	(4) Yves Fortier, (2) Charles N. Brower, (1) Christoph H. Schreuer,
Derains & Gharavi	GAR 100	24	1,29	(2) Emmanuel Gaillard, (2) Jan Paulsson, (2) Bernard Hanotiau,
Covington & Burling	GLOBAL 100	23	1,23	(4) Marc Lalonde, (1) John M. Townsend, (1) Karl-Heinz Böckstiegel,
Cleary Gottlieb Steen & Hamilton	GLOBAL 100	23	1,40	(3) Stephen M. Schwebel, (3) Brigitte Stern, (3) Francisco Orrego Vicuña,
Weil Gotshal & Manges	GLOBAL 100	22	1,62	(5) Christopher Thomas, (4) Toby Landau, (2) Peter Tomka,
Dechert	GLOBAL 100	21	1,14	(2) Christopher Thomas, (2) Brigitte Stern, (1) Mark A. Clodfelter,
Clifford Chance	GLOBAL 100	21	1,12	(2) Kaj Hobér, (2) Gabrielle Kaufmann-Kohler, (1) Bohuslav Klein,
Todd Weiler	Sole Practitioner - OECD	20	1,00	(1) Richard McLAREN, (1) Mark A. Kantor, (1) James Anaya,
Latham & Watkins	GLOBAL 100	19	1,17	(2) Brigitte Stern, (2) Guido Santiago Tawil, (1) Albert Jan van den Berg,

Name of firm	Type of firm	Number of cases	Average number of reappointments	Most frequently reappointed
Baker McKenzie	GLOBAL 100	19	1,31	(2) Stanimir A. Alexandrov, (2) Guido Santiago Tawil, (2) Horacio A. Grigera Naón,
Squire Patton Boggs	GLOBAL 100	18	1,88	(4) Christopher Thomas, (3) Brigitte Stern, (3) Toby Landau,
DLA Piper	GLOBAL 100	18	1,07	(2) Pierre Mayer, (1) Christopher Thomas, (1) Vaughan Lowe,
Winston & Strawn	GLOBAL 100	17	1,09	(2) Michael Reisman, (1) Albert Jan van den Berg, (1) Samuel Wordsworth,
Quinn Emanuel Urquhart & Sullivan	GLOBAL 100	16	1,07	(2) Stephen M. Schwebel, (1) David A.R. Williams, (1) Daniel M. Price,
Volterra Fietta	GAR 100	16	1,20	(2) Francisco Orrego Vicuña, (2) Marc Lalonde, (1) William W. Park,

11.7 Table 7

Table of indirect repeat appointments for law firms. Top 25 sorted by firms total number of cases.

Name of firm	Type of firm	Number of cases	Average number of reappointments	Most frequently reappointed
Freshfields Bruckhaus Deringer	GLOBAL 100	85	1,45	(4) Jeswald W. Salacuse, (4) Rodrigo Oreamuno, (3) Eduardo Zuleta,
White & Case	GLOBAL 100	71	1,39	(4) Hans van Houtte, (4) Yves Fortier, (3) Pierre Tercier,
King & Spalding	GLOBAL 100	66	**1,54**	(4) Francisco Orrego Vicuña, (4) Lucius Caflisch, (3) Vaughan Lowe,
Allen & Overy	GLOBAL 100	46	1,44	(4) James R. Crawford, (3) David A.R. Williams, (3) Pierre Tercier,
Arnold & Porter	GLOBAL 100	43	1,27	(4) V.V. Veeder, (3) Piero Bernardini, (2) Yves Fortier,
Curtis Mallet-Prevost Colt & Mosle	GLOBAL 100	43	1,27	(2) Klaus Sachs, (2) Juan Fernández-Armesto, (2) Veijo Heiskanen,
Shearman & Sterling	GLOBAL 100	41	1,42	(4) Yves Fortier, (3) Gabrielle Kaufmann-Kohler, (3) Laurent Lévy,
Foley Hoag	GAR 100	35	1,21	(3) Juan Fernández-Armesto, (2) Vaughan Lowe, (2) Laurent Lévy,
Sidley Austin	GLOBAL 100	35	1,26	(3) Karl-Heinz Böckstiegel, (3) Gabrielle Kaufmann-Kohler, (2) Franklin Berman,
Matrix Chambers	Barrister Chambers	35	1,26	(4) Hans van Houtte, (2) Michael C. Pryles, (2) Eduardo Zuleta,
Debevoise & Plimpton	GLOBAL 100	28	1,16	(2) Hi-Taek Shin, (2) Brigitte Stern, (2) Klaus Sachs,
Essex Court Chambers	Barrister Chambers	26	1,25	(2) Andrés Rigo Sureda, (2) Vaughan Lowe, (2) Florentino P. Feliciano,
Derains & Gharavi	GAR 100	24	1,21	(3) Rolf Knieper, (2) Pierre Tercier, (2) Azzedine Kettani,
Covington & Burling	GLOBAL 100	23	1,24	(3) Gilbert Guillaume, (2) Gabrielle Kaufmann-Kohler, (2) Campbell McLachlan,
Cleary Gottlieb Steen & Hamilton	GLOBAL 100	23	1,30	(3) Yves Fortier, (3) Bruno Simma, (2) Francisco Orrego Vicuña,
Weil Gotshal & Manges	GLOBAL 100	22	1,24	(4) Hans van Houtte, (2) David A.R. Williams, (1) Francisco Orrego Vicuña,
Dechert	GLOBAL 100	21	1,32	(4) Juan Fernández-Armesto, (2) Rodrigo Oreamuno, (2) Yves Derains,
Clifford Chance	GLOBAL 100	21	1,08	(2) Alexis Mourre, (2) Neil Kaplan, (1) Jan Paulsson,
Todd Weiler	Sole Practitioner - OECD	20	1,00	(1) Makhdoom Ali Khan, (1) Daniel Bethlehem, (1) Fali S. Nariman,
Latham & Watkins	GLOBAL 100	19	1,17	(2) Robert BRINER, (2) Vaughan Lowe, (2) Francisco Orrego Vicuña,
Baker McKenzie	GLOBAL 100	19	1,27	(3) David A.R. Williams, (2) David A.O. Edward, (2) Yves Derains,

Name of firm	Type of firm	Number of cases	Average number of reappointments	Most frequently reappointed
Squire Patton Boggs	GLOBAL 100	18	1,25	(4) Hans van Houtte, (2) Franklin Berman, (1) Stephen L. Drymer,
DLA Piper	GLOBAL 100	18	1,17	(3) Gabrielle Kaufmann-Kohler, (2) Yves Fortier, (1) David A.R. Williams,
Winston & Strawn	GLOBAL 100	17	1,13	(2) Rodrigo Oreamuno, (2) William W. Park, (2) Raúl E. Vinuesa,
Quinn Emanuel Urquhart & Sullivan	GLOBAL 100	16	1,06	(2) Pierre Tercier, (1) Veijo Heiskanen, (1) Bernardo M. Cremades,
Volterra Fietta	GAR 100	16	1,05	(2) William W. Park, (1) Juan Fernández-Armesto, (1) Emmanuel Gaillard,

11.8 Table 8

Table of direct repeat appointments for government ministries. Top 10 sorted by government ministries total number of cases.

Country	Number of cases	Average number of reappointments	Most frequently reappointed
Argentina	69	**2,00**	(6) Santiago Torres Bernárdez, (5) Pedro Nikken, (4) Brigitte Stern,
Venezuela	42	1,85	(6) Brigitte Stern, (4) Pierre-Marie Dupuy, (4) Raúl E. Vinuesa,
Spain	32	1,37	(2) Claus von Wobeser, (2) Daniel Bethlehem, (2) Anna Joubin-Bret,
Egypt	28	1,77	(4) Brigitte Stern, (3) Zachary Douglas, (3) Phillipe Sands,
Ecuador	22	1,60	(3) Brigitte Stern, (2) Bruno Simma, (2) Christopher Thomas,
United Staes	22	1,00	(1) Fern M. SMITH, (1) Carolyn B. Lamm, (1) Claus von Wobeser,
Canada	21	1,21	(3) Brigitte Stern, (2) Gavan Griffith, (1) Zachary Douglas,
Mexico	17	1,13	(2) Eduardo Magallón Gómez, (2) Eduardo Siqueiros, (1) Ignacio Gómez Palacio,
Ukraine	13	1,50	(4) Michael Reisman, (2) Jürgen VOSS, (1) Donald M. McRae,
Czech Republic	12	1,50	(3) Toby Landau, (2) Christopher Thomas, (2) Peter Tomka,

11.9 Table 9

Table of indirect repeat appointments for government ministries. Top 10 sorted by government ministries total number of cases.

Country	Number of cases	Average number of reappointments	Most frequently reappointed
Argentina	69	**1,67**	(5) Francisco Orrego Vicuña, (4) Lucius Caflisch, (4) Jeswald W. Salacuse,
Venezuela	42	1,47	(6) Juan Fernández-Armesto, (3) Piero Bernardini, (3) Yves Derains,
Spain	32	1,21	(2) Eduardo Zuleta, (2) Lawrence Collins, (2) Bruno Simma,
Egypt	28	1,19	(3) Pierre Tercier, (2) Bernardo M. Cremades, (2) V.V. Veeder,
Ecuador	22	1,41	(3) Rodrigo Oreamuno, (3) Gabrielle Kaufmann-Kohler, (2) Raúl E. Vinuesa,
United Staes	22	1,08	(3) V.V. Veeder, (1) Toby Landau, (1) Emmanuel Gaillard,
Canada	21	1,08	(2) V.V. Veeder, (2) Gabrielle Kaufmann-Kohler, (1) Kenneth Keith,
Mexico	17	1,17	(3) Horacio A. Grigera Naón, (2) Bernardo M. Cremades, (1) Ricardo Ramirez Hernandez,
Ukraine	13	1,31	(4) James R. Crawford, (2) Gavan Griffith, (1) Prosper Weil,
Czech Republic	12	1,33	(4) Hans van Houtte, (1) Veijo Heiskanen, (1) Lawrence Collins,

11.10 Table 10

Top 25 law firms appointment of top 25 arbitrators sorted by number of firms cases.

Firm Name	Firm Type	Total Number of Cases	% of direct appointments to top 25 arbitrators	% of indirect appointments to top 25 arbitrators	Number of top 25 arbitrators appointed directly/indirectly
Freshfields Bruckhaus Deringer	GLOBAL 100	**85**	41 %	33 %	**22**
White & Case	GLOBAL 100	71	34 %	37 %	21
King & Spalding	GLOBAL 100	66	46 %	34 %	19
Allen & Overy	GLOBAL 100	46	42 %	43 %	18
Arnold & Porter	GLOBAL 100	43	38 %	42 %	20
Curtis Mallet-Prevost Colt & Mosle	GLOBAL 100	43	24 %	30 %	15
Shearman & Sterling	GLOBAL 100	41	37 %	45 %	17
Matrix Chambers	Barrister Chambers	35	38 %	29 %	14
Sidley Austin	GLOBAL 100	35	**62 %**	44 %	17
Foley Hoag	GAR 100	35	32 %	41 %	15
Debevoise & Plimpton	GLOBAL 100	28	40 %	39 %	15
Essex Court Chambers	Barrister Chambers	26	54 %	43 %	15
Derains & Gharavi	GAR 100	24	39 %	41 %	13
Covington & Burling	GLOBAL 100	23	50 %	39 %	12
Cleary Gottlieb Steen & Hamilton	GLOBAL 100	23	43 %	50 %	14
Weil Gotshal & Manges	GLOBAL 100	22	38 %	48 %	13
Clifford Chance	GLOBAL 100	21	47 %	22 %	11
Dechert	GLOBAL 100	21	38 %	48 %	9
Todd Weiler	Sole Practitioner - OECD	20	27 %	29 %	6
Latham & Watkins	GLOBAL 100	19	43 %	52 %	14
Baker McKenzie	GLOBAL 100	19	29 %	42 %	9
DLA Piper	GLOBAL 100	18	38 %	**57 %**	13
Squire Patton Boggs	GLOBAL 100	18	53 %	35 %	8

Firm Name	Firm Type	Total Number of Cases	% of direct appointments to top 25 arbitrators	% of indirect appointments to top 25 arbitrators	Number of top 25 arbitrators appointed directly/indirectly
Winston & Strawn	GLOBAL 100	17	42 %	33 %	11
Quinn Emanuel Urquhart & Sullivan	GLOBAL 100	16	53 %	44 %	12