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ICSID, public opinion and the effect of (hypothetical) elite messaging

by

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The International Centre for Settlement of Investment Disputes (ICSID) has emerged as a powerful actor within the field of inter-state investment arbitration. However, as with other international institutions, its existence depends on continued acceptance by domestic actors.

Relative to other international institutions, ICSID receives little public discussion, is largely unknown to voters and is absent from public opinion research. The Pew Research Center has tracked American support for free trade agreements and the policies of the World Trade Organization (WTO) since 1997 (spoiler alert: excepting the 2007-2008 period, more Americans think such agreements are good but around one-fifth have no opinion), and since 2008, the Chicago Council on Global Affairs has tracked American support for the International Criminal Court (ICC) (68-70% of Americans think the US should participate). This *Perspective* presents the first broad poll of the American public on ICSID and the results of a survey experiment on information provision.

As part of the 2012 Cooperative Congressional Election Study, 1,000 individuals were asked nine foreign policy questions, including questions about support for the WTO, the ICC and ICSID.¹ Approximately a quarter of the sample received a control version consisting of a brief introduction and the question concerning support for ICSID.

“[ICSID] was established in 1965 to facilitate the settlement of disputes between countries and foreign investors. Use of ICSID courts is voluntary but binding when a provision for ICSID arbitration is written into investment contracts. Should U.S. citizens and corporations be subject to international court rulings from the ICSID?”

Less than a third (32%) expressed support for ICSID, with 28% directly rejecting the idea that US citizens and corporations should be subject to ICSID rulings. Despite the relative obscurity of ICSID, less than 40% answered “Don’t know.” However,

averages obscure a strong partisan divide. Disaggregation by partisan self-identification reveals much stronger support by Democrats (46% “Yes” versus 21% “No”) and rejection by Republicans (19% “Yes” versus 41% “No”). Independents fell in between and were more likely to respond “Don’t know” (46%).

Table 1: Base (control group) responses, by partisan type

Support ICSID	Democrats	Independents	Republicans	Total
Yes	46%	27%	19%	32%
No	21%	27%	41%	28%
Don't Know	33%	46%	41%	40%
<i>Total Obs.</i>	94	85	59	238

Pearson $\chi^2(4) = 16.1866$ Pr = 0.003

“Every opinion is a marriage of information and predisposition.”² Given the limited information provided in the question prompt, responses may correlate more strongly with predispositions than a considered opinion on the question at hand. Republicans are generally less supportive of US involvement in international organizations and may be responding simply to that aspect of the question. Given the institution’s obscurity, respondents’ preferences may be relatively weak and responsive to additional information.

To isolate and understand how opinions would differ given more discussion of ICSID’s role, the remaining respondent pool received additional information concerning the economic benefits of ICSID, as well as the actors that helped establish ICSID. The establishment process was attributed to one of three randomly assigned groups: bipartisan Congressional action, Congressional Democrats and Congressional Republicans.

“To dispel any concern that ICSID awards would be overridden in the U.S. court system, [Congress enacted, on a bipartisan basis | Congressional Democrats helped to enact | Congressional Republicans helped to enact], a statute obligating U.S. courts to give ICSID awards “the same full faith and credit” as if the award was a judgment of a court in the United States. Ensuring compliance with ICSID awards reduces uncertainty for foreign companies. This agreement to abide by common rules makes the U.S. more competitive for foreign direct investment dollars, which create jobs in the United States. Should U.S. citizens and corporations be subject to international court rulings from the ICSID?”

Table 2 shows the change in the levels of support caused by each of the three treatments. The bipartisan message generated a 6% increase in support for ICSID, but was the only treatment to increase support. Close examination of partisan responses suggests that party politics remain active. Democrats responded positively to the bipartisan message (+11%), but neither Independents nor Republicans were similarly moved. In fact, the slight gains in support for ICSID among Independents and Republicans (4% and 2%, respectively) were more than offset by increased rejection of ICSID (5% and 6%, respectively).

Table 2: Responses, by partisan type and experimental treatment

Support ICSID	Democrats	Independents	Republicans	Total
Base	46%	27%	19%	33%
Δ Bipartisan Message	11%	4%	2%	6%
Δ Democratic Message	0%	5%	3%	3%
Δ Republican Message	-9%	2%	11%	0%

Reject ICSID	Democrats	Independents	Republicans	Total
Base	21%	27%	41%	28%
Δ Bipartisan Message	-14%	5%	6%	-2%
Δ Democratic Message	-11%	7%	2%	-1%
Δ Republican Message	-8%	0%	-9%	-5%

"Don't Know"	Democrats	Independents	Republicans	Total
Base	33%	46%	41%	39%
Δ Bipartisan Message	4%	-9%	-8%	-4%
Δ Democratic Message	11%	-12%	-5%	-1%
Δ Republican Message	17%	-2%	-2%	5%

Note: Sums of individual groups may appear to differ from 100% because of rounding.

Both the Democratic and Republican messages resulted in countervailing effects from partisans. The Democratic message diminished rejection of ICSID among Democrats by 11%, but the same message increased rejection of ICSID among Republicans and Independents. Similarly, the Republican message increased support for ICSID by 11% among Republicans, but served simply to increase uncertainty among Democrats. “Don’t know” responses from Democrats rose by 17%. In contrast, the additional information provided in all the treatments declined the percent of Independents answering “Don’t know”, but served to equally increase Independents’ support and rejection of ICSID. Partisan reaction to even the bipartisan message complicates the impact of attempting to move opinion.

As it stands, support for ICSID falls behind both that of the WTO and the ICC. Raising ICSID from obscurity could increase support, but only if discussions remain politically neutral. Whether other framings of ICSID’s benefits—transparency, third party objectivity, US investors’ protection from foreign courts—would be more broadly effective remains an open question.

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¹ Alexandra Guisinger and Elizabeth Saunders, “Mapping the boundaries of elite cues: How elites shape mass opinion across international issues,” ISA Annual Meeting, March 2014.

² John Zaller, *The Nature and Origins of Mass Opinion* (Cambridge: CUP, 1992), p. 6.

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