

# Sovereignty under Attack: Foreign Investor-Host State Disputes and Host Country Policy Autonomy

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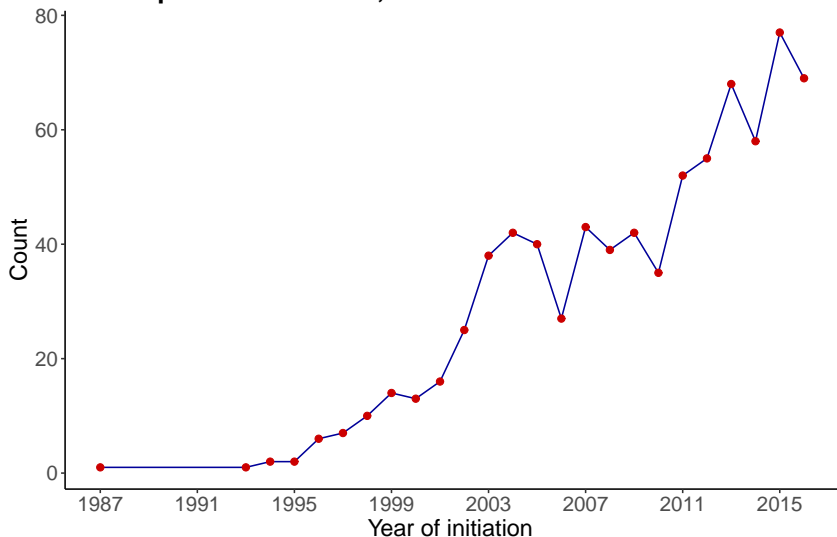
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# Rise of International Investment Disputes

## 782 Disputes: 1987–2016, 114 Host and 74 Home States

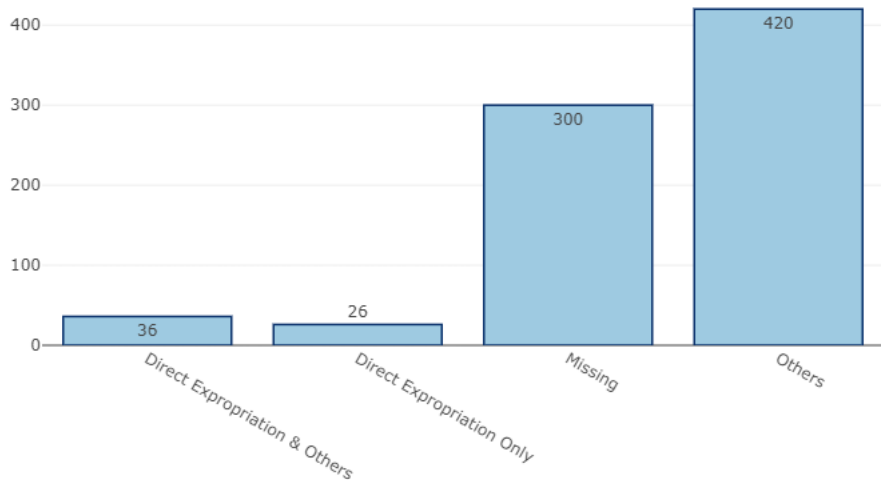


Source: UNCTAD

- BITs + Investment Disputes: Legal standing for private investors to sue host country governments (Simmons 2014).
- Argument: This transformative change in the relationship between foreign investors and host countries brings about significant constraints on the autonomy of the host state.
  - Scope of disputes
  - Branches of host government
  - Levels of host government
- Our goal is to document these important developments and their consequences. We demonstrate how national sovereignty appears under attack in both a positive and a negative sense.

## Expanded Scope of Disputes

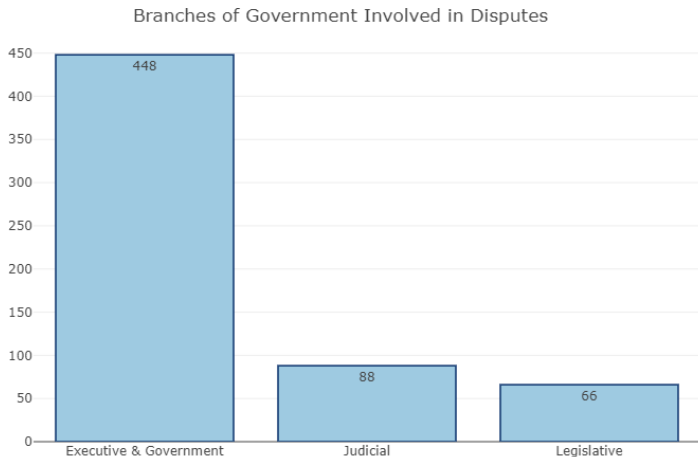
Types of Claimed Breaches in 782 Disputes: 1987-2016





- Expropriation
  - *Burmilla Trust and others v. Lesotho*
- Beyond Expropriation:
  - *Portigon v. Spain*
  - *Biram and others v. Spain*
  - *Eiser and Ergia Solar v. Spain*
  - *Isolux v. Spain*
  - ...
  - *Olin v. Libya*
  - *Tekfen and TML v. Libya*
  - *Strabag v. Libya*
  - ...
  - *TransCanada v. USA*
  - *Cargill v. Mexico*
  - *Novera v. Bulgaria*

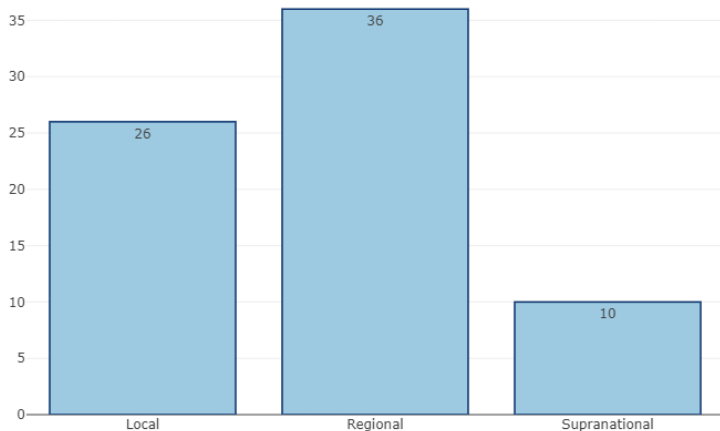
## Multiple Branches of Government Involved



- de Sutter and others v. Madagascar (Judicial-positive?)
- Muszynianka v. Slovakia (Constitutional-negative?)

## Multiple Levels of Government Involved

Other Levels of Government Involved in Disputes



- Illustrative case: Metalclad



- Globalization and Domestic Autonomy in Governance (Vernon 1971; Rodrik 1997, 2011, 2013; Strange, 1996, 2015)
  - Not just an issue at the national level
  - Not just the executive branch
  - Constraining, but can be positive or negative
- Political Risk (Kobrin 1979, 1980, 1987, 1998; Jensen 2008; Jensen et al. 2012; Li 2009; Johns and Wellhausen 2016; Zaheer 1995; Eden and Miller 2004)
  - Expansion of disputes beyond traditional types of direct expropriation and nationalization
  - Expansion of disputes beyond traditional sectors of extractive and manufacturing
  - Firms on offensive, overcoming liability of foreignness and obsolescing bargaining

- International Institutions and state behavior (Burley 1993; Chayes and Chayes 1995; Downs, Rocke and Barsoom 1996; Simmons 2000, 2014; ).
  - Do international institutions constrain state behavior or are states complying out of self-interest?
  - By giving private firms legal standing, BITs affect firm and government behavior
- Domestic sovereignty is under attack. This is both positive and negative