



Trends in International Investment Arbitration

18 August 2014

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1



Part I: ICSID



2

The World Bank Group

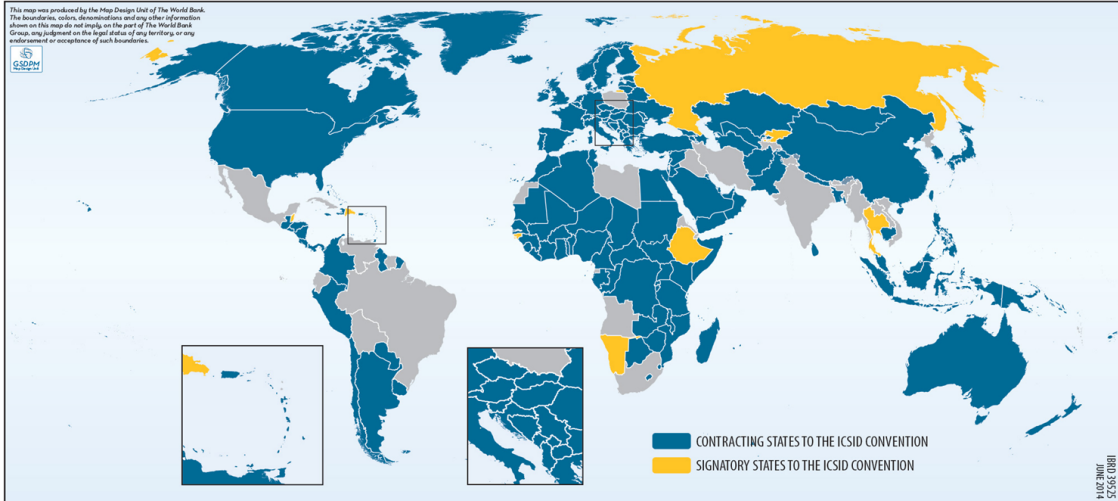


ICSID	IBRD	IDA	IFC	MIGA
International Centre for Settlement of Investment Disputes	International Bank for Reconstruction and Development	International Development Association	International Financial Corporation	Multilateral Investment Guarantee Agency
MISSION:	MISSION:	MISSION:	MISSION:	MISSION:
<ul style="list-style-type: none"> ➤ Provides facilities for conciliation and arbitration of international investment disputes 	<ul style="list-style-type: none"> ➤ Lends funds to governments of middle and low-income countries 	<ul style="list-style-type: none"> ➤ Provides interest-free loans and grants to governments of poorest countries 	<ul style="list-style-type: none"> ➤ Provides loans, equity and technical assistance to stimulate private sector investment in developing countries 	<ul style="list-style-type: none"> ➤ Guarantees for investors in developing countries against non-commercial risk

ICSID Convention



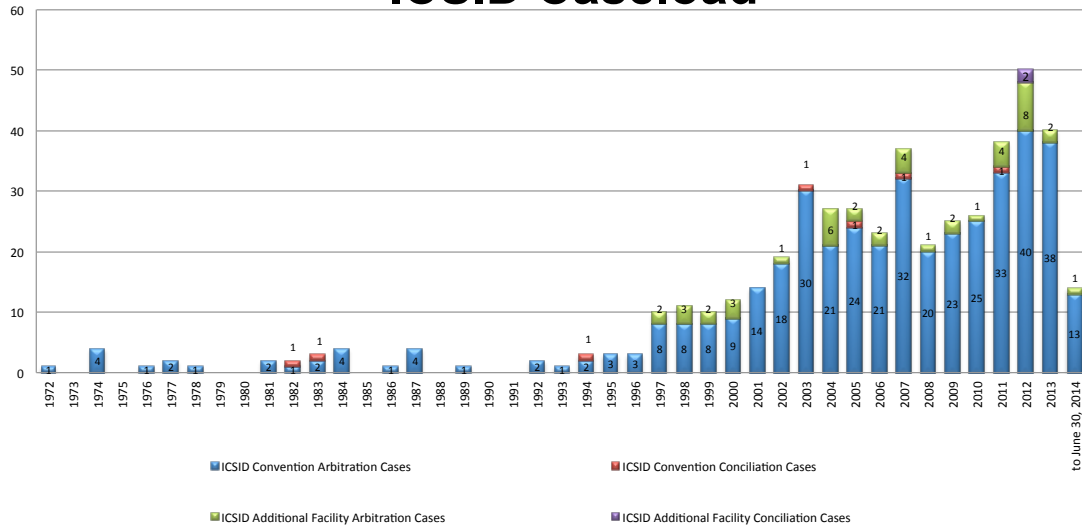
ICSID Membership 150 Member States



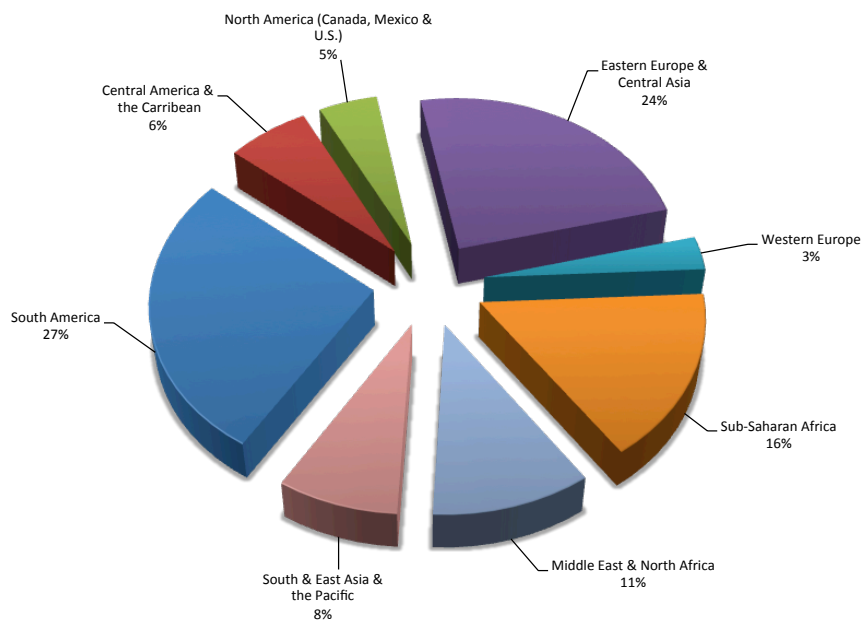
Part II: Case Trends



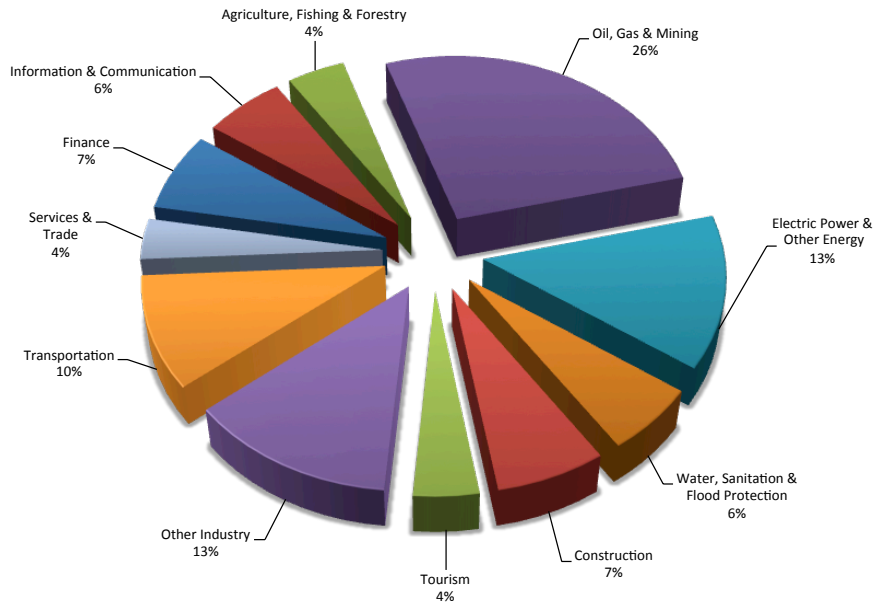
ICSID Caseload



ICSID Cases by State Party Involved

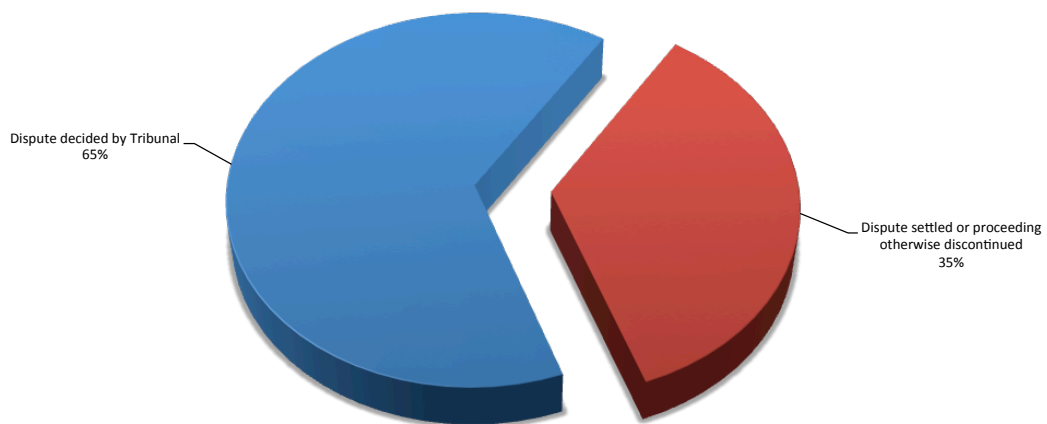


ICSID Cases by Sector

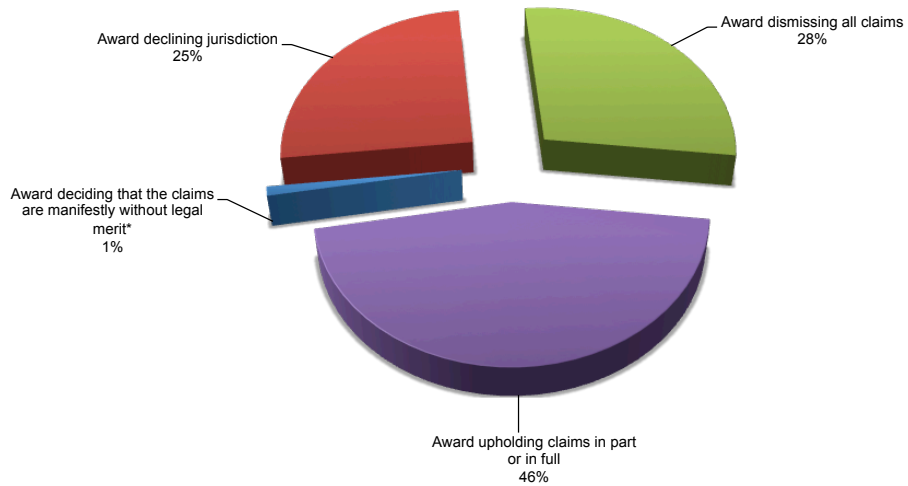


* This sector classification is based on the World Bank's sector codes, available at <http://siteresources.worldbank.org/PROJECTS/Resources/SectorCodesLists.pdf>

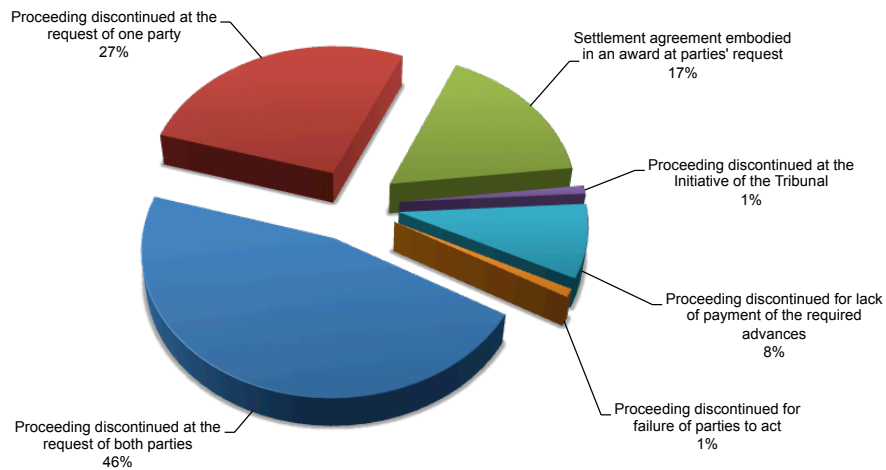
Outcomes



Disputes decided by Tribunals



Settlements or Discontinued Proceedings

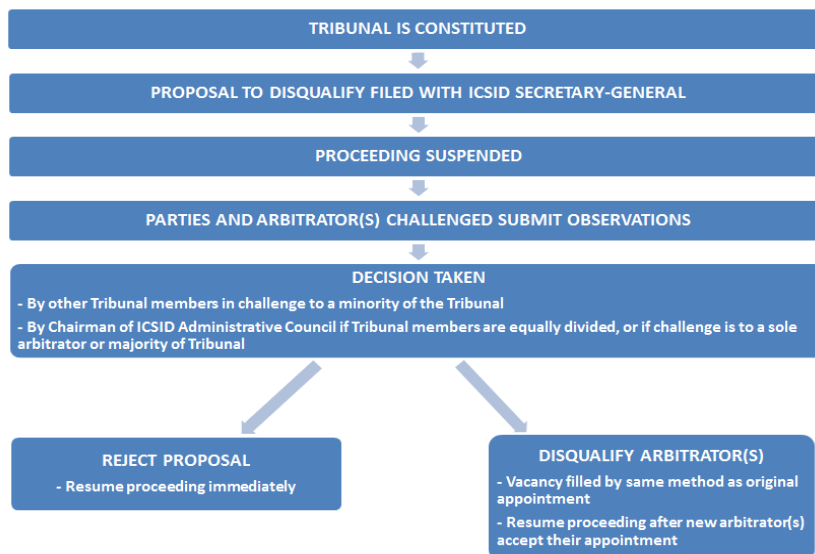


Part III: Arbitrator Challenges



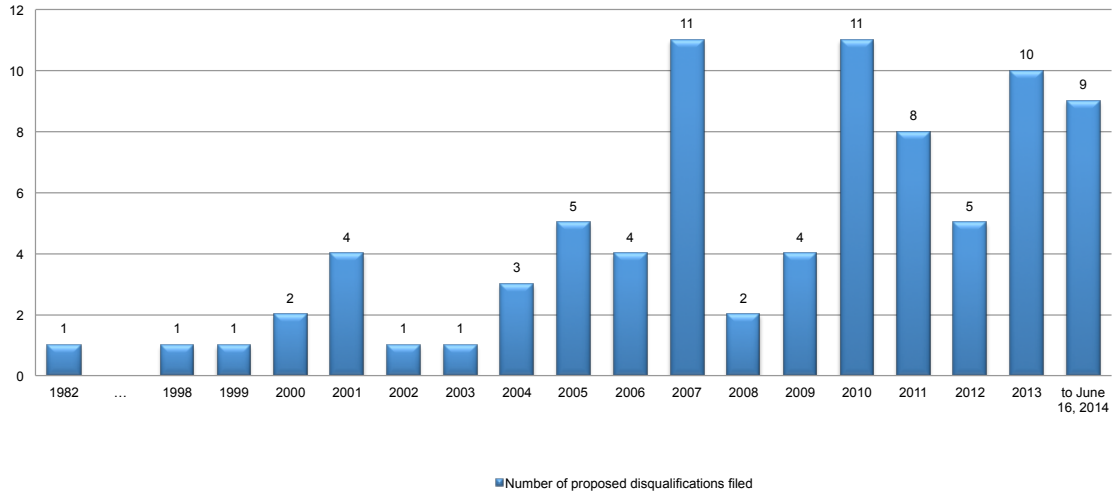
13

Challenge Procedure

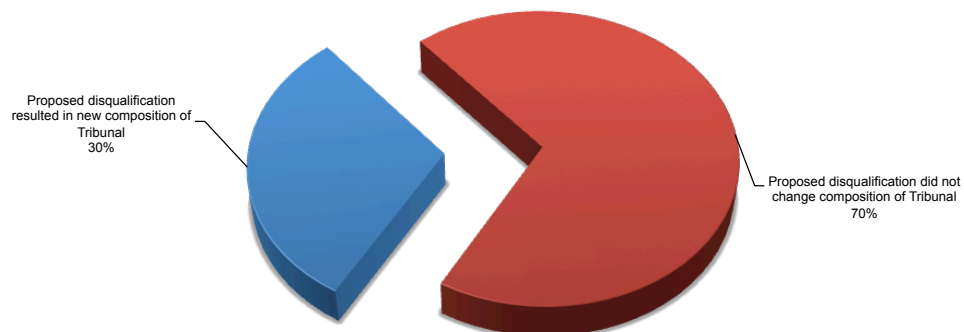


14

Number of Applications Filed



Outcome of Proposals



Grounds for Disqualification Article 57 of the ICSID Convention

- Manifest lack of the qualities in Article 14(1)
 - High moral character
 - Recognized competence in law, commerce...
 - Reliability to exercise independent judgment
- Nationality requirements not met

17

Procedure for Challenge Arbitration Rule 9

- A party must promptly file its proposal to disqualify with the Secretary-General, stating its reasons
- The Secretary-General
 - (a) transmits the proposal to the members of the Tribunal
 - (b) notifies the other party of the proposal
- The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Chairman

18

Who Decides the Proposal for Disqualification? Article 58 of the ICSID Convention

- The other members of the Tribunal in the absence of the arbitrator concerned (Arbitration Rule 9(4))
- The Chairman decides when
 - Members are equally divided
 - Proposal to disqualify a sole arbitrator
 - Proposal to disqualify majority of arbitrators

19

Part IV: Transparency



20

Relevant Provisions

- ICSID Arbitration Rules 6(2), 15, 32(2), 37(2), 48(4)
- Administrative and Financial Regulations, 22-23

Transparency v. Confidentiality

- Confidentiality is a traditional feature of arbitration
- No presumption of confidentiality in ICSID proceedings

Rules Applicable to the Centre

- Publish information on registration and termination of cases (Administrative and Financial Regulation 22)
- Maintain registers with information on the institution, conduct and disposition of each case (Administrative and Financial Regulation 23)

23

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24

About the Presenter



- James Claxton is Legal Counsel at the International Centre for Settlement of Investment Disputes in Washington, DC. Prior to joining ICSID, he practiced international arbitration in Paris for six years with two international firms. James regularly lectures at law schools on the topics of international arbitration, international investment law, and ICSID procedure. He is a graduate of the University of Colorado, Tulane University Law School, and the London School of Economics and Political Science.