

Latest ICSID Caseload Statistics Released

19 Aug 2015

First published by [Mondaq](#).

The World Bank's International Centre for Settlement of Investment Disputes ("ICSID") has released its latest caseload statistics (Issue 2015-2). The statistics offer insight into the ICSID's caseload profile, based on cases registered or administered by the ICSID as of 30 June 2015.

The ICSID is an international arbitration institution which facilitates legal dispute resolution and conciliation between international investors. The recently released statistics provide information about the:

- Number of cases registered under the ICSID Convention and Additional Facility Rules.
- Number of other cases administered by the ICSID Secretariat.
- Basis of consent to ICSID jurisdiction invoked in registered arbitration and conciliation cases.
- Geographic distribution of ICSID cases based on the State which is party to the dispute.
- Economic sectors involved in ICSID disputes.
- Outcomes in ICSID arbitration and conciliation proceedings, including further information on:
 - Disputes decided by arbitral tribunals.
 - Discontinued ICSID arbitration proceedings.
 - Outcomes in annulment proceedings.

The nationalities and geographic origins of arbitrators, conciliators and ad hoc committee members appointed in ICSID cases.

As of 30 June 2015, the statistics show the ICSID has registered a cumulative total of 525 cases under the ICSID Convention and Additional Facility Rules since it was established in 1972. The highest number of claims filed with the ICSID in a single year was in 2012, with 50 registrations. However, 2015 seems on track to set a new record, with 28 cases already registered during the first half of 2015.

ICSID Convention Arbitration Cases represent the majority of all registered cases (470 cases; 89.5% of all registered cases). Other registered case types are distributed between the ICSID Additional Facility Arbitration Cases (8.8%), ICSID Convention Conciliation Cases (1.3%) and ICSID Additional Facility Conciliation Cases (0.4%). Despite ICSID Convention Arbitration Cases displaying a steady increase year-on-year, there has been no corresponding increase in the numbers for other case types.

Although rarely used, the ICSID Secretariat offers varying degrees of administrative and organizational support for non-ICSID dispute settlement during State-State or investor-State proceedings. Examples include:

- *The Southern Bluefin Tuna case* (Australia and New Zealand v. Japan).
- An arbitration under the Softwood Lumber Agreement of 2006 (United States v. Canada).

More frequently though, the ICSID provides administrative assistance to investor-State arbitrations under the UNCITRAL Rules, as well as other ad hoc dispute settlement provisions to varying degrees. Such assistance ranges from support with organizing hearings, through to administrative services. Upon the parties' request, the Secretariat will also appoint arbitrators and decide proposals for arbitrator disqualifications.

The ICSID also assists in organizing hearings for arbitration proceedings conducted under the auspices of the ICC, LCIA, PCA, and other institutions, as well as UNCITRAL arbitrations.

According to the recent statistics, the basis of consent used to establish the ICSID's jurisdiction within cases registered under the ICSID Convention and Additional Facility Rules were:

- Bilateral Investment Treaty (61%).
- Investment Contract between the Investor and the Host-State (17.7%).
- Host-State's Investment Law (9.5%).
- Energy Charter Treaty (7.5%).

The following represent the basis for an insignificant portion of the ICSID's caseload: Dominican Republic-United States-Central America Free Trade Agreement; North American Free Trade Agreement (NAFTA); Oman-U.S. Free Trade Agreement; Canada-Peru Free Trade Agreement; Central America-Panama Free Trade Agreement.

Looking at the state party involved in all ICSID cases, Eastern European and Central Asian countries share 25% of cases registered with the ICSID, while another 25% of cases involve South American countries. Only 5% of cases are registered against Western European countries and a staggeringly small 4% of cases against North American countries (United States, Canada and Mexico).

Oil, gas and mining represent the largest economic sector (26%), followed by electric power and other energy (15%), then transport (9%).

The statistics show that 64% of registered cases were decided by ICSID Tribunals, while 36% of disputes were either settled or discontinued. The ICSID Tribunal has either partly or fully upheld 45% of claims, dismissed 29% of claims and declined 25% for jurisdiction reasons.

Of all Arbitrators, Conciliators and ad hoc Committee Members appointed in cases registered under the ICSID Convention and additional facility rules, 48% are from Western Europe, while 28% are from North America (including the United States, Canada and Mexico). This is ironic given that cases against countries from these regions constitute a minority of the ICSID's caseload. For specific countries, French nationals top the list with 181 appointments, followed by United States nationals with 178 appointments, then English nationals with 148 appointments. No Turkish nationals have yet been appointed, despite Turkey, Turkish parties, or regional matters regularly featuring in cases brought before the ICSID.

However, indicators suggest that sooner rather than later, Turkish practitioners will be appointed as Arbitrators, Conciliators and ad hoc Committee Members in Cases Registered under the ICSID Convention and Additional Facility Rules. The Arbitration Center of the Istanbul Chamber of Commerce, Istanbul Arbitration Center, and Istanbul Arbitration Association will all cumulatively contribute to development of local arbitrators, as well as establish general procedural knowledge and the notion of treaty arbitration.

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