



## RECENT TRENDS IN IIAS AND ISDS<sup>1</sup>

### Highlights

- Countries continue to use international investment agreements (IIAs) as a tool for international investment policy making. The year 2014 saw the conclusion of 27 IIAs, that is one every other week. This brings the total number of agreements to 3,268.
- The IIA universe is evolving with regard to substantive provisions: pre-establishment commitments and sustainable development-oriented clauses are on the rise.
- At least 45 countries and four regional integration organizations are currently revising or have recently revised their model agreement.
- Investors continue to use the investor–State dispute settlement (ISDS) mechanism. In 2014, claimants initiated 42 known treaty-based ISDS cases. With 40 per cent of new cases initiated against developed countries, the relative share of cases against developed countries has been on the rise (compared to the historical average of 28 per cent).
- The two types of State conduct most commonly challenged by investors in 2014 were cancellations or alleged violations of contracts, and revocation or denial of licences. Over time, the Energy Charter Treaty (ECT) surpassed the North American Free Trade Agreement (NAFTA) as the most frequently invoked IIA.
- ISDS tribunals rendered at least 42 decisions in 2014. This includes an award of USD 50 billion in three closely related cases, the highest known award by far in the history of investment arbitration. The overall number of concluded cases has reached 356, with 37 per cent decided in favour of the State, 25 per cent in favour of the investor and 28 per cent of cases settled.
- The year saw important multilateral developments geared towards increased transparency in ISDS. These include the coming into effect of the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency and the adoption of the Convention on Transparency in Treaty-based Investor-State Arbitration, which will be opened for signature later in 2015.
- Concerns about IIAs and ISDS have prompted a debate about their challenges and opportunities in multiple forums. Today, a broad consensus is emerging that the regime of IIAs and the related dispute settlement mechanism need to be reformed to make them work better for sustainable development. Such reform would need to be undertaken in a comprehensive and gradual way, taking into account the interests of all stakeholders.

<sup>1</sup> Prepared by UNCTAD's IIA Team in advance of the Expert Meeting on "The Transformation of the International Investment Agreement Regime" from 25-27 February 2015 in Geneva. UNCTAD is grateful to Azar Aliyev, N. Jansen Calamita, Lise Johnson, Lisa Sachs, Christian Tams, Catharine Titi and the UNCITRAL Secretariat for providing comments on the draft version of this note.

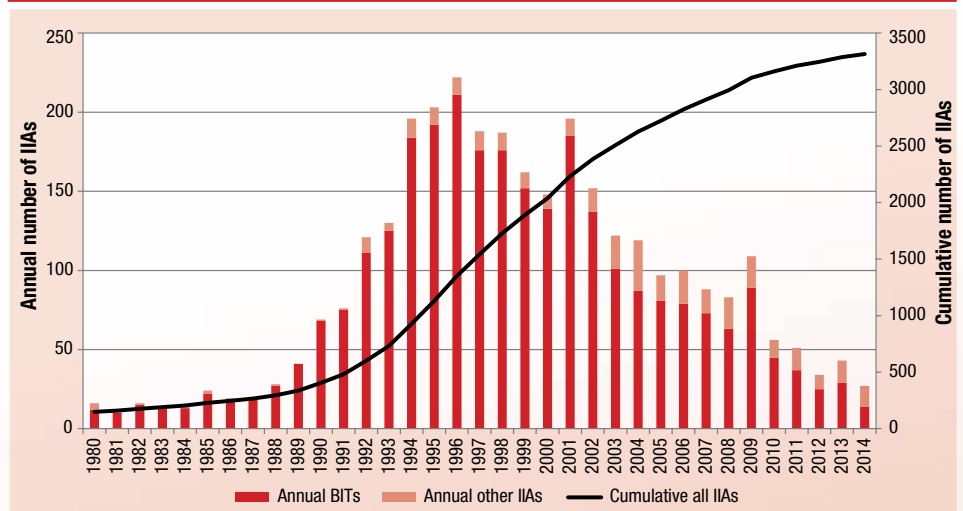


## I. Trends in the conclusion of IIAs

The year 2014 saw the conclusion of 27 IIAs (14 BITs and 13 “other IIAs”),<sup>2</sup> bringing the total number of agreements to 3,268 (2,923 BITs and 345 “other IIAs”) by year-end (figure 1).<sup>3</sup> Countries/economies that were particularly active in concluding IIAs in 2014 include Canada (seven), Colombia, Côte d’Ivoire, and the European Union (three each). The annual number of “other IIAs” has remained stable over the past few years, while the annual number of BITs continues to decline. See annex 1 for a list of each country’s total number of BITs and “other IIAs” concluded in 2014.

An increasing number of countries are reviewing their model IIAs in line with recent developments in international investment law. At least 45 countries and four regional integration organizations are currently or have been recently revising their model IIAs.<sup>4</sup> Notable examples include work on a new model agreement by Brazil and India.

**Figure 1. Trends in IIAs signed, 1980–2014**



Source: UNCTAD, IIA database.  
Note: Preliminary data for 2014.

“Other IIAs” concluded in 2014 can be grouped into three broad categories, as identified in *WIR12*:<sup>5</sup>

- *Seven agreements with BIT-equivalent provisions.* The Australia–Japan EPA, the Australia–Republic of Korea FTA, the Canada–Republic of Korea FTA, the Japan–Mongolia EPA, the Mexico–Panama FTA, the Additional Protocol to the Framework Agreement of the Pacific Alliance (between Chile, Colombia, Mexico and Peru), and the Treaty on Eurasian Economic Union (between Armenia, Belarus, Kazakhstan and the Russian Federation) fall in the category of IIAs that contain obligations commonly found in BITs, including substantive standards of investment protection and ISDS.
- *Three agreements with limited investment provisions.* The European Union–Georgia Association Agreement, the European Union–Republic of Moldova Association Agreement and the European Union–Ukraine Association Agreement fall in the category of agreements that provide limited investment-related provisions (e.g. national treatment with respect to commercial presence or free movement of capital relating to direct investments).

<sup>2</sup> “Other IIAs” refers to economic agreements other than BITs that include investment-related provisions (e.g. investment chapters in economic partnership agreements (EPAs) and free trade agreements (FTAs), regional economic integration agreements and framework agreements on economic cooperation).

<sup>3</sup> The total number of IIAs has been revised as a result of retroactive adjustments to UNCTAD’s database on BITs and “other IIAs”. Readers are invited to visit UNCTAD’s expanded and upgraded IIA database, which offers a number of new user-friendly search options (<http://investmentpolicyhub.unctad.org>).

<sup>4</sup> Updated based on chapter III of the 2014 World Investment Report (WIR), Investing in the SDGs: An Action Plan, June 2014, available at [http://unctad.org/en/publicationslibrary/wir2014\\_en.pdf](http://unctad.org/en/publicationslibrary/wir2014_en.pdf).

<sup>5</sup> The text of the Agreement for Trade in Services and Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India is not available.

- *Two agreements with investment cooperation provisions and/or a future negotiating mandate.* The ECOWAS–United States of America Trade and Investment Framework Agreement (TIFA), and the Malaysia–Turkey FTA contain general provisions on cooperation in investment matters and/or a mandate for future negotiations on investment.

At the same time, some countries continued to disengage from the IIA regime. For example, Indonesia gave notice of the termination of its BIT with the Netherlands in March 2014.<sup>6</sup> The termination will come into effect on 1 July 2015. The agreement will remain in force for a period of 15 years with respect to investments made prior to the date of termination. And, following South Africa’s unilateral denouncement of its BIT with Germany in October 2013,<sup>7</sup> the termination came into effect on 22 October 2014. The agreement will remain in force for a period of 20 years with respect to investments made prior to the date of termination.

## II. Content of new IIAs

### ***Pre-establishment commitments are on the rise***

The number of agreements that include pre-establishment rights is on the rise. As of the end of 2014, about 10 per cent of all IIAs included pre-establishment commitments. Among those IIAs concluded in 2014, about half extend national treatment and most-favoured-nation treatment (MFN) obligations to the acquisition and establishment of investments. Pre-establishment IIAs signed in 2014 include both: (i) BITs or “other IIAs” with fully fledged investment chapters (although sometimes they carve out pre-establishment commitments from the scope of ISDS); and (ii) “other IIAs” with limited investment provisions (the European Union agreements with Georgia, the Republic of Moldova and Ukraine are examples).

### ***Sustainable development provisions continue to be included***

A review of 13 IIAs concluded in 2014 for which texts are available (seven BITs and six “other IIAs”) shows that most of the treaties include sustainable development-oriented features, such as those identified in UNCTAD’s Investment Policy Framework for Sustainable Development (IPFSD) and the 2012, 2013 and 2014 *World Investment Reports* (table 1).<sup>8</sup> Of these agreements, eleven have general exceptions – for example, for the protection of human, animal or plant life or health, or the conservation of exhaustible natural resources. Another eleven treaties contain a clause that explicitly recognizes that the parties should not relax health, safety or environmental standards in order to attract investment. Of those eleven, nine treaties refer to the protection of health and safety, labour rights, the environment or sustainable development in the preamble.

These sustainable development features are supplemented by treaty elements that aim more broadly at preserving regulatory space for public policies of host countries and/or at minimizing exposure to investment arbitration. Provisions found include clauses that: (i) limit treaty scope (for example, by excluding certain types of assets from the definition of investment); (ii) clarify obligations (for example, by including more detailed clauses on fair and equitable treatment (FET) and/or indirect expropriation); (iii) contain exceptions to transfer-of-funds obligations or carve-outs for prudential measures; and (iv) carefully regulate ISDS (for example, by limiting treaty provisions that are subject to ISDS, excluding certain policy areas from ISDS, setting out a special mechanism for taxation and prudential measures, and/or restricting the allotted time period within which claims can be submitted). Notably, all of the reviewed treaties concluded in 2014 omit the so-called umbrella clause.

<sup>6</sup> Signed in 1994.

<sup>7</sup> Signed in 1995.

<sup>8</sup> Table 1 is based on IIAs concluded in 2014 for which text was available. It does not include “framework agreements”, which do not include substantive investment provisions.

**Table 1. Selected aspects of IIAs signed in 2014**

	Additional Protocol to the Framework Agreement of the Pacific Alliance	Australia-Japan EPA	Australia-Republic of Korea FTA	Canada-Cameroon BIT	Canada-Côte d'Ivoire BIT	Canada-Republic of Korea FTA	Canada-Mali BIT	Canada-Nigeria BIT	Canada-Senegal BIT	Canada-Serbia BIT	Treaty on Eurasian Economic Union	Israel-Myanmar BIT	Mexico-Panama FTA	Stimulate responsible business practices	Avoid over-exposure to litigation	Preserve the right to regulate in the public interest	Focus on investments conducive to development	Sustainable development enhancing features
	X	X	X	X	X	X	X	X	X	X	X	X	X					
		X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
	X	X	X	X	X	X	X	X	X	X								X
											X							
		X										X						
Policy Objectives		X											X					
			X		X									X				
		X				X								X				
		X	X											X				
		X												X				
		X												X				
Selected aspects of IIAs	References to the protection of health and safety, labour rights, environment or sustainable development in the treaty preamble																	
	Refined definition of investment (reference to characteristics of investment, exclusion of portfolio investment, sovereign debt obligations or claims of money arising solely from commercial contracts)																	
	A carve-out for prudential measures in the financial services sector																	
	Fair and equitable standard equated to the minimum standard of treatment of aliens under customary international law																	
	Clarification of what does and does not constitute an indirect expropriation																	
	Detailed exceptions from the free-transfer-of-funds obligation, including balance-of-payments difficulties and/or enforcement of national laws																	
	Omission of the so-called "umbrella" clause																	
	General exceptions, e.g. for the protection of human, animal or plant life or health; or the conservation of exhaustible natural resources																	
	Explicit recognition that parties should not relax health, safety or environmental standards to attract investment																	
	Promotion of Corporate and Social Responsibility standards by incorporating a separate provision into the IIA or as a general reference in the treaty preamble																	
	Limiting access to ISDS (e.g., limiting treaty provisions subject to ISDS, excluding policy areas from ISDS, limiting time period to submit claims, no ISDS mechanism)																	

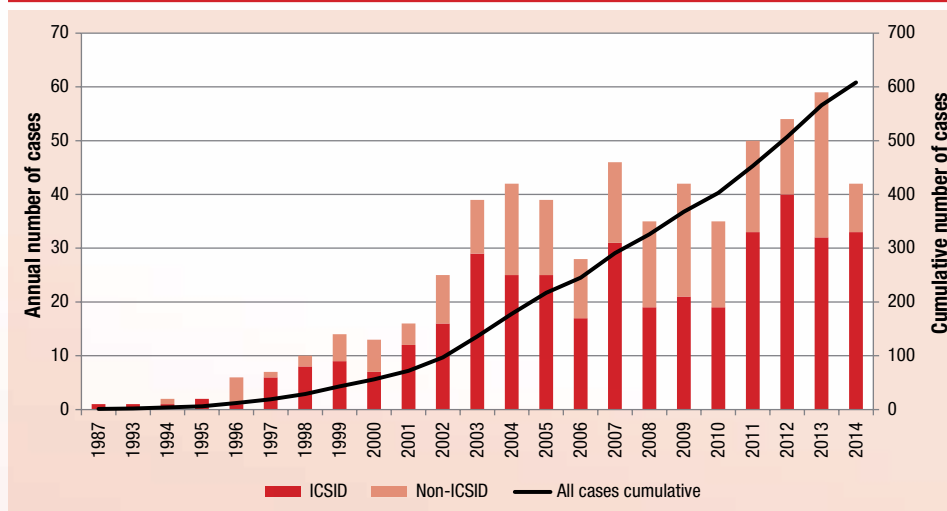


### III. Latest trends in ISDS<sup>9</sup>

In 2014, investors initiated 42 known ISDS cases pursuant to IIAs (annex 4).<sup>10</sup> This is lower than the record high number of new claims in 2013 (59 cases) and 2012 (54 cases) and closer to the annual averages observed in the period between 2003 and 2011.<sup>11</sup> As most IIAs allow for fully confidential arbitration, the actual number of non-ICSID cases could be higher.

Last year's developments brought the overall number of known ISDS claims to 608 (figure 2). One hundred and one governments around the world have been respondents to one or more known ISDS claims.

**Figure 2. Known ISDS cases, annual and cumulative (1987–2014)**



Source: UNCTAD, ISDS database.

Note: Preliminary data for 2014.

**Respondent States.** The relative share of cases against developed countries is on the rise. In 2014, 60 per cent of all cases were brought against developing and transition economies, and the remaining 40 per cent against developed countries.<sup>12</sup> In total, 32 countries faced new claims last year (annex 3). The most frequent respondent in 2014 was Spain (five cases),<sup>13</sup> followed by Costa Rica, the Czech Republic, India, Romania, Ukraine and the Bolivarian Republic of Venezuela (two cases each). Three countries – Italy, Mozambique and Sudan – faced their first (known) ISDS claims in history. The most frequent respondent States are presented in figure 3.

<sup>9</sup> Information about 2014 claims has been compiled on the basis of public sources, including specialized reporting services. We are grateful for additional information received from the ICSID Secretariat and the Energy Charter Treaty Secretariat. Information about arbitral decisions issued in 2014 was compiled by Federico Ortino, King's College London. UNCTAD's more comprehensive overview of ISDS developments in 2014, including the summary of key findings by arbitral tribunals on substantive and procedural issues, is forthcoming.

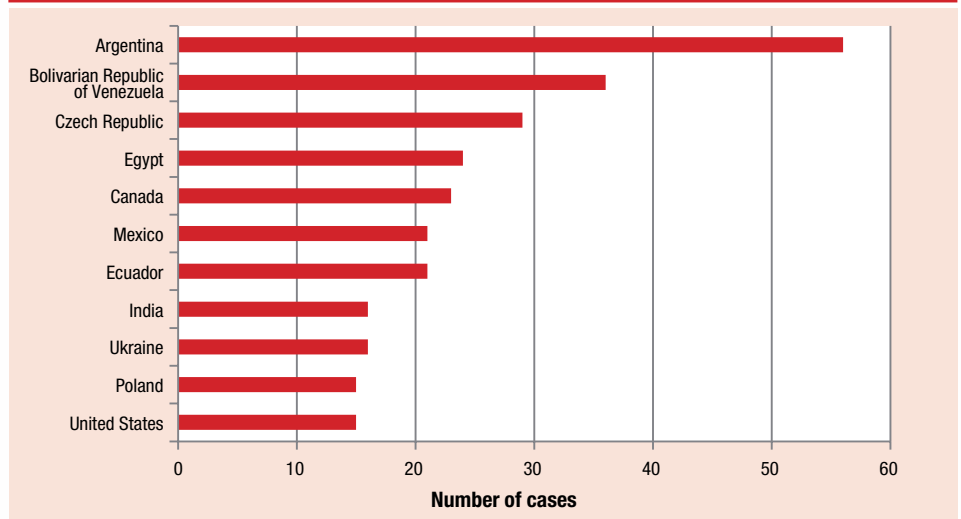
<sup>10</sup> This Note does not cover cases that are exclusively based on investment contracts (State contracts) or national investment laws, nor cases where a party has so far only signaled its intention to submit a claim to ISDS, but has not yet commenced the arbitration.

<sup>11</sup> Annual and cumulative case numbers are being continuously adjusted as a result of verification and may not exactly match the case numbers reported in the previous years.

<sup>12</sup> The share of cases against developed countries was 47 per cent in 2013, and 34 per cent in 2012, while the historical average is 28 per cent.

<sup>13</sup> All five new claims against Spain arise from the same measures that prompted the six claims against the country in 2013. Claimants maintain that the seven per cent tax on the revenues of power generators and a reduction of subsidies for renewable energy producers – introduced by Spain in 2012 to counter the budget deficit – wipe out expected profits from their investments in photovoltaic, solar thermal and wind plants.

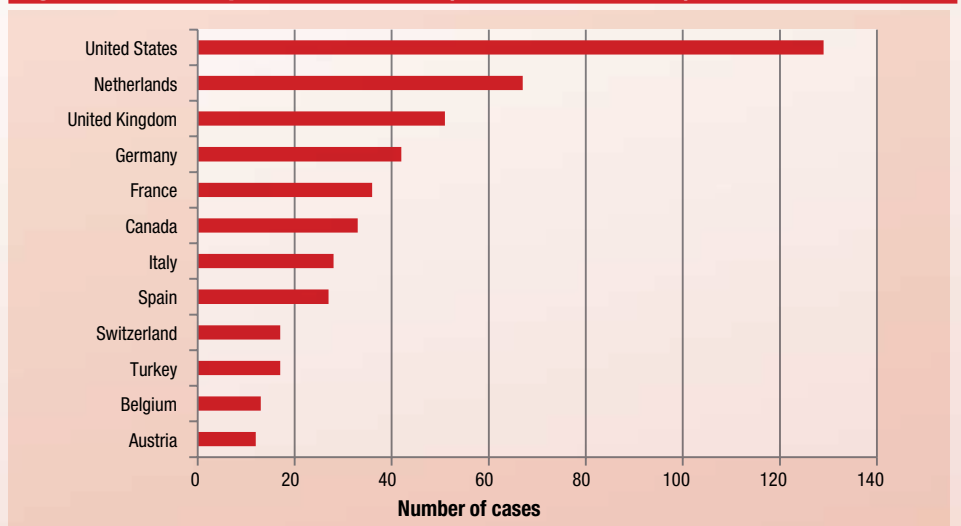
**Figure 3. Most frequent respondent States (total as of end of 2014)**



Source: UNCTAD, ISDS database.  
Note: Preliminary data for 2014.

**Home country of investor.** Of the 42 known new cases, 35 were brought by investors from developed countries and five were brought by investors from developing countries. In two cases the nationality of the claimants is unknown. The most frequent home States in 2014 were the Netherlands (seven cases by Dutch investors), followed by the United Kingdom of Great Britain and Northern Ireland and the United States (five each), France (four), Canada (three) and Belgium, Cyprus and Spain (two each) (annex 3). This corresponds to the historical trend where developed-country investors – in particular, those from the United States, Canada and several European Union countries – have been the main users of the system responsible for over 80 per cent of all ISDS claims (figure 4).

**Figure 4. Most frequent home States (total as of end 2014)**



Source: UNCTAD, ISDS database.  
Note: Preliminary data for 2014.

**Intra-European Union disputes.** A quarter of all known new disputes (eleven) were intra-European Union cases, which is lower than the year before (in 2013, 42 per cent of all new claims were intra-European Union). Half of them were brought pursuant to the ECT, and the rest on the basis of intra-European Union BITs. The year's developments brought the overall number of intra-European Union investment arbitrations to 99, i.e. approximately 16 per cent of all cases globally.<sup>14</sup>

<sup>14</sup> When calculating intra-European Union disputes, the time factor (when a particular State joined the European Union) has been disregarded; all disputes between States *currently* members of the European Union are counted as intra-European Union disputes.

**Arbitral forums/rules.** Of the 42 new known disputes, 33 were filed with the International Centre for Settlement of Investment Disputes (ICSID) (of which three cases were under the ICSID Additional Facility Rules), six under the arbitration rules of UNCITRAL,<sup>15</sup> two under the Stockholm Chamber of Commerce (SCC) and one under the International Chamber of Commerce (ICC) arbitration rules. These numbers are roughly in line with overall historical statistics.

**Applicable investment treaties.** The majority of new cases (30) were brought under BITs. Ten cases were filed pursuant to the provisions of the ECT (twice in conjunction with a BIT), two cases under the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA), one case under the NAFTA and one case under the Canada-Peru FTA. Looking at the full historical statistics, the ECT has now surpassed the NAFTA as the most frequently invoked IIA (60 and 53 cases respectively). Among BITs, the Argentina-United States BIT remains the most frequently used agreement (20 disputes).

**Economic sectors involved.** About 61 per cent of cases filed in 2014 relate to the services sector. Primary industries account for 28 per cent of new cases while the remaining eleven per cent arose out of investments in manufacturing. Looking at the industries in which investments were made, the most numerous was generation and supply of electric energy (at least eleven cases), followed by oil, gas and mining (ten), construction (five) and financial services (three).

**Measures challenged.** The two types of State conduct most frequently challenged by investors in 2014 were: (i) cancellations or alleged violations of contracts or concessions (at least nine cases); and (ii) revocations or denials of licences or permits (at least six cases). Other challenged measures include: legislative reforms in the renewable energy sector, alleged discrimination of foreign investors vis-à-vis domestic ones, alleged direct expropriations of investments, alleged failure on the part of the host State to enforce its own legislation, alleged failure to protect investments, as well as measures related to taxation, regulation of exports, bankruptcy proceedings and water tariff regulation. Information about a number of cases is lacking. Some of the new cases concern public policies, including environmental issues, anti-money laundering and taxation.

**Amounts claimed.** Information regarding the amount sought by investors is scant. For cases where this information has been reported, the amount claimed ranges from USD 8 million<sup>16</sup> to about USD 2.5 billion.<sup>17</sup>

## **ISDS outcomes in 2014**

In 2014, ISDS tribunals rendered at least 42 decisions in investor-State disputes, 33 of which are in the public domain (at the time of writing) (annex 5).<sup>18</sup> Of the 33 public decisions, ten principally addressed jurisdictional issues, with five decisions upholding the tribunal's jurisdiction (at least in part) and five decisions rejecting jurisdiction.<sup>19</sup> Fifteen decisions on the merits were rendered in 2014, with 10 accepting – at least in part – the claims of the investors, and five dismissing all of the claims.

Of the 10 decisions finding States liable, six found a violation of the FET provision and seven a violation of the expropriation provision. At least

<sup>15</sup> All of the UNCITRAL cases were filed pursuant to IIAs concluded prior to 2014 and, therefore, the new UNCITRAL Transparency Rules do not apply to any of them, unless the disputing parties agree to their application in their specific dispute.

<sup>16</sup> *Anglia Auto Accessories, Ivan Peter Busta and Jan Peter Busta v. Czech Republic* (SCC).

<sup>17</sup> *Cem Uzan v. Republic of Turkey* (SCC).

<sup>18</sup> There may have been other decisions in 2014 whose existence is not known due to the confidentiality of the dispute concerned.

<sup>19</sup> These exclude those decisions that upheld the tribunal's jurisdiction and considered at the same time the merits of the dispute.

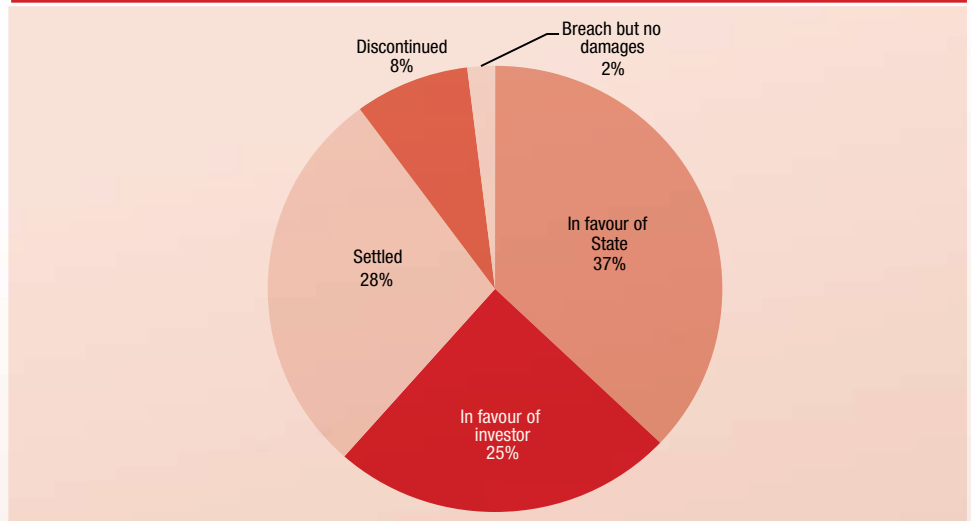
eight decisions rendered in 2014 awarded compensation to the investor, including a combined award of approximately USD 50 billion in three closely related cases, the highest known award by far in the history of investment arbitration.<sup>20</sup>

Five decisions on applications for annulment were issued in 2014 by ICSID *ad hoc* committees, all of them rejecting the application for annulment.<sup>21</sup>

Ten cases were reportedly settled in 2014, and another five proceedings discontinued for unknown reasons.

By the end of 2014, the overall number of concluded cases reached 356.<sup>22</sup> Out of these, approximately 37 per cent (132 cases) were decided in favour of the State (all claims dismissed either on jurisdictional grounds or on the merits), and 25 per cent (87 cases) ended in favour of the investor (monetary compensation awarded). Approximately 28 per cent of cases (101) were settled<sup>23</sup> and eight per cent of claims (29) were discontinued for reasons other than settlement (or for unknown reasons). In the remaining two per cent (seven cases), a treaty breach was found but no monetary compensation was awarded to the investor (figure 5).

**Figure 5. Results of concluded cases (total as of end 2014)**



Source: UNCTAD, ISDS database.  
Note: Preliminary data for 2014.

### Other developments in ISDS

In 2014 a number of multilateral developments geared towards addressing existing international investment policymaking challenges took place. These included:

- *The UNCITRAL Rules on Transparency in Treaty-based Investor–State Arbitration*<sup>24</sup> came into effect on 1 April 2014. The UNCITRAL Transparency Rules provide for open oral hearings in ISDS cases as well as the publication of key documents, including notices of arbitration, pleadings, transcripts, and all decisions and awards issued by the tribunal (subject to certain safeguards, including protection of confidential information).<sup>25</sup> By default (in the absence of further action), the Rules apply only to

<sup>20</sup> The aggregate amount of compensation obtained by the three claimants constituting the majority shareholders of former Yukos Oil Company in the ISDS proceedings against the Russian Federation. See *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 226, Award, 18 July 2014; *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 227, Award, 18 July 2014; *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 228, Award, 18 July 2014.

<sup>21</sup> Three out of the five applications for annulment had been filed by the respondent States, and the remaining two by the claimant investors.

<sup>22</sup> As a result of the on-going verification of UNCTAD's ISDS database, a number of proceedings previously thought to be pending or those whose outcome was unknown have been confirmed as concluded.

<sup>23</sup> In settled cases, the specific terms of settlement often remain confidential.

<sup>24</sup> Available at [http://www.uncitral.org/uncitral/uncitral\\_texts/arbitration/2014Transparency.html](http://www.uncitral.org/uncitral/uncitral_texts/arbitration/2014Transparency.html).

<sup>25</sup> A repository for information published under the Transparency Rules has been established, available at <http://www.uncitral.org/transparency-registry/en/introduction.html>.



UNCITRAL arbitrations brought under IIAs concluded after 1 April 2014, and thus exclude the multitude of pre-existing IIAs from their coverage.

- *The United Nations General Assembly adopted the Convention on Transparency in Treaty-based Investor–State Arbitration on 10 December 2014.*<sup>26</sup> The aim of the Convention is to give those States<sup>27</sup> that wish to make the UNCITRAL Transparency Rules applicable to their existing IIAs a mechanism to do so. Specifically, and in the absence of reservations by the signatories, the Transparency Rules will apply to disputes where (i) both the respondent State and the home State of the claimant investor are parties to the Convention; and (ii) only the respondent State is party to the Convention but the claimant investor agrees to the application of the Rules. A signing ceremony will be held on 17 March 2015 in Port Louis, Mauritius, opening the convention for signature. A minimum of three parties need to sign and ratify the Convention for it to enter into force.

## **IV. Towards a roadmap for IIA reform**

UNCTAD's *World Investment Forum 2014 (WIF 2014) – IIA Conference* sketched the contours of a roadmap for IIA reform. Between 13 and 16 October 2014, over 3000 participants from 150 countries gathered at the WIF in Geneva. The Conference on “Reforming the International Investment Agreements Regime” – one of the many meetings held as part of the WIF – heard from representatives of all IIA stakeholders,<sup>28</sup> including chief negotiators, senior business representatives, and representatives from relevant intergovernmental organisations and civil society. Participants addressed the challenges arising from IIAs and considered ways to reform the international investment policy regime.

<sup>26</sup> Available at <http://www.uncitral.org/pdf/english/commissionsessions/unc/session47/a-cn-9-812-e.pdf>.

<sup>27</sup> As well as regional economic integration organisations.

<sup>28</sup> Statements are available at <http://unctad-worldinvestmentforum.org/programme/sessions/reforming-theinternational-investment-agreements-regime/>.

## Annex 1. Summary table of IIAs signed in 2014 and totals, by end of 2014 (by country/economy)

Country/Economy	BITs	"Other IIAs"	Total IIAs
Armenia		1	44
Australia		2	37
Austria		3	128
Azerbaijan	1		52
Belarus		1	66
Belgium		3	157
Benin		1	26
Brunei Darussalam		1	25
Bulgaria		3	132
Burkina Faso	1	1	25
Cambodia		1	36
Cameroon	1		24
Canada	6	1	57
Cape Verde		1	16
Chile		1	79
Colombia	2	1	34
Côte d'Ivoire	2	1	23
Croatia		3	122
Cyprus		3	91
Czech Republic		3	143
Denmark		3	119
Estonia		3	92
European Union		3	66
Finland		3	136
France	1	3	172
Gambia		1	24
Georgia	1	1	37
Germany		3	198
Ghana		1	34
Greece		3	107
Guinea		1	29
Guinea-Bissau		1	11
Hungary		3	122
India		1	97
Indonesia		1	80
Ireland		3	64
Israel	1		43
Italy		3	156
Japan		2	41
Kazakhstan		1	56

Country/Economy	BITs	“Other IIAs”	Total IIAs
Kyrgyzstan	1		37
Lao People’s Democratic Republic		1	41
Latvia		3	108
Liberia		1	12
Lithuania		3	118
Luxembourg		3	157
Malaysia		2	91
Mali	1	1	27
Malta		3	86
Mexico		2	44
Mongolia		1	47
Myanmar	1	1	24
Netherlands		3	160
Niger		1	15
Nigeria	1	1	36
Panama		1	35
Peru		1	57
Philippines		1	51
Poland		3	126
Portugal		3	119
Qatar	1		65
Republic of Korea		2	107
Republic of Moldova		1	45
Romania		3	146
Russian Federation	1	1	78
Senegal	1	1	37
Serbia	1		57
Sierra Leone		1	12
Singapore	2	1	72
Slovakia		3	119
Slovenia		3	101
Spain		3	146
Sweden		3	133
Switzerland	1		152
Thailand		1	61
Togo		1	14
Turkey	1	1	112
Ukraine		1	79
United Kingdom		3	169

Source: UNCTAD, IIA database.  
Note: Preliminary data for 2014.

## Annex 2. IIAs signed in 2014

Title of the agreement	Date of signature
ASEAN–India Services and Investment Agreement	08/09/2014
Australia–Japan EPA	08/07/2014
Australia–Republic of Korea FTA	08/04/2014
Azerbaijan–Russian Federation BIT	29/09/2014
Burkina Faso–Singapore BIT	27/08/2014
Cameroon–Canada BIT	03/03/2014
Canada–Côte d’Ivoire BIT	30/11/2014
Canada–Mali BIT	28/11/2014
Canada–Nigeria BIT	06/05/2014
Canada–Republic of Korea FTA	22/09/2014
Canada–Senegal BIT	27/11/2014
Canada–Serbia BIT	01/09/2014
Colombia–France BIT	10/07/2014
Colombia–Turkey BIT	28/07/2014
Côte d’Ivoire–Singapore BIT	27/08/2014
ECOWAS–United States TIFA	05/08/2014
European Union–Georgia Association Agreement	27/06/2014
European Union–Republic of Moldova Association Agreement	27/06/2014
European Union–Ukraine Association Agreement	27/06/2014
Georgia–Switzerland BIT	03/06/2014
Israel–Myanmar BIT	05/10/2014
Japan–Mongolia EPA	22/07/2014
Kyrgyzstan–Qatar BIT	08/12/2014
Malaysia–Turkey FTA	17/04/2014
Mexico–Panama FTA	03/04/2014
Protocol to the Pacific Alliance Agreement between Chile, Colombia, Mexico and Peru	10/02/2014
Treaty on Eurasian Economic Union	29/05/2014

Source: UNCTAD, IIA database.



## Annex 3. ISDS cases filed in 2014 (by country)

Country	Cases as respondent State	Cases as home State of claimant investor <sup>29</sup>
Albania	1	
Argentina	1	
Austria		1
Belgium		3
Bolivia, Plurinational State of	1	
Bosnia and Herzegovina	1	
Burundi	1	
Canada	1	3
China	1	1
Costa Rica	2	
Cyprus	1	2
Czech Republic	2	
Dominican Republic	1	
Egypt	1	
Estonia	1	
France		4
Germany		2
Greece	1	
Hungary	1	
India	2	
Indonesia	1	
Italy	1	1
Jordan		1
Lebanon		2
Montenegro	1	
Mozambique	1	
Netherlands		7
Panama	1	
Peru	1	
Republic of Korea		1
Romania	2	
Senegal	1	
Serbia	1	
Slovakia	1	
Slovenia		1
South Africa		1
Spain	5	2
Sudan	1	
Sweden		1
Switzerland		1
Turkey	1	
Ukraine	2	
United Kingdom		5
United States		5
Venezuela, Bolivarian Republic of	2	
Yemen	1	
Unknown		2

<sup>29</sup> The total number in this column exceeds 42 because some cases were brought by co-claimants of different nationalities.

## Annex 4. ISDS cases filed in 2014

1. *A11Y Ltd v. Czech Republic* (UNCITRAL)
2. *Albaniabeg Ambient Sh.p.k, M. Angelo Novelli and Costruzioni S.r.l. v. Republic of Albania* (ICSID Case No. ARB/14/26)
3. *Alpiq AG v. Romania* (ICSID Case No. ARB/14/28)
4. *Anglia Auto Accessories, Ivan Peter Busta and Jan Peter Busta v. Czech Republic* (SCC)
5. *Anglo American PLC v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/14/1)
6. *Ansung Housing Co., Ltd. v. People's Republic of China* (ICSID Case No. ARB/14/25)
7. *Ayoub-Farid Saab and Fadi Saab v. Cyprus* (ICC)
8. *Bear Creek Mining Corporation v. Republic of Peru* (ICSID Case No. ARB/14/21)
9. *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen* (ICSID Case No. ARB/14/30)
10. *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic* (ICSID Case No. ARB/14/3)
11. *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic* (ICSID Case No. ARB/14/32)
12. *CEAC Holdings Limited v. Montenegro* (ICSID Case No. ARB/14/8)
13. *Cem Uzan v. Republic of Turkey* (SCC)
14. *City-State N.V., Praktyka Asset Management Company LLC, Crystal-Invest LLC and Prodiz LLC v. Ukraine* (ICSID Case No. ARB/14/9)
15. *Corona Materials, LLC v. Dominican Republic* (ICSID Case No. ARB(AF)/14/3)
16. *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic* (ICSID Case No. ARB/14/16)
17. *David Aven, Samuel Aven, Carolyn Park, Eric Park, Jeffrey Shioleno, Giacomo Buscemi, David Janney and Roger Raguso v. Costa Rica* (UNCITRAL)
18. *Elektrogospodarstvo Slovenije - razvoj ininzeniring d.o.o. v. Bosnia and Herzegovina* (ICSID Case No. ARB/14/13)
19. *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic* (ICSID Case No. ARB/14/14)
20. *Highbury International AVV, Compañía Minera de Bajo Caroní AVV, and Ramstein Trading Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/14/10)
21. *IBT Group LLC, Constructor, Consulting and Engineering (Panamá) SA and International Trade and Business and Trade, LLC v. Republic of Panama* (ICSID Case No. ARB/14/33)
22. *Infinito Gold Ltd. v. Republic of Costa Rica* (ICSID Case No. ARB/14/5)
23. *InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain* (ICSID Case No. ARB/14/12)
24. *Ioan Micula, Viorel Micula and others v. Romania* (ICSID Case No. ARB/14/29)
25. *JML Heirs LLC and J.M. Longyear LLC v. Canada* (UNCITRAL)

26. *Krederi Ltd. v. Ukraine* (ICSID Case No. ARB/14/17)
27. *Louis Dreyfus Armateurs v. India* (UNCITRAL)
28. *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain* (ICSID Case No. ARB/14/1)
29. *Michael Dagher v. Republic of the Sudan* (ICSID Case No. ARB/14/2)
30. *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain* (ICSID Case No. ARB/14/11)
31. *Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara v. Republic of Indonesia* (ICSID Case No. ARB/14/15)
32. *Oded Besserglik v. Republic of Mozambique* (ICSID Case No. ARB(AF)14/2)
33. *Red Eléctrica Internacional SAU v. Bolivia* (UNCITRAL)
34. *REENERGY S.à r.l. v. Kingdom of Spain* (ICSID Case No. ARB/14/18)
35. *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain* (ICSID Case No. ARB/14/34)
36. *Sodexo Pass International SAS v. Hungary* (ICSID Case No. ARB/14/20)
37. *Tarique Bashir and SA Interpétrol Burundi v. Republic of Burundi* (ICSID Case No. ARB/14/31)
38. *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt* (ICSID Case No. ARB/14/4)
39. *United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia* (ICSID Case No. ARB/14/24)
40. *VICAT v. Republic of Senegal* (ICSID Case No. ARB/14/19)
41. *Vodafone International Holdings BV v. India* (UNCITRAL)
42. *Zelena N.V. and Energo-Zelena d.o.o Indija v. Republic of Serbia* (ICSID Case No. ARB/14/27)

## Annex 5. Arbitral decisions adopted in 2014

### Publicly available decisions

1. *Achmea B.V. v. The Slovak Republic* (UNCITRAL, PCA Case No. 2013-12 (Number 2)), Award on Jurisdiction and Admissibility, 20 May 2014
2. *Al Warrag v Indonesia* (UNCITRAL) Award (with dissent), 15 December 2014
3. *Alapli Elektrik B.V. v. Republic of Turkey* (ICSID Case No. ARB/08/13), Decision on Annulment, 10 July 2014
4. *Apotex Holdings Inc. and Apotex Inc. v. United States of America* (ICSID Case No. ARB(AF)/12/1), Award, 25 August 2014
5. *Caratube International Oil Company LLP v. The Republic of Kazakhstan* (ICSID Case No. ARB/08/12), Decision on the Annulment Application of Caratube International Oil Company LLP, 21 February 2014
6. *Cervin Investissements S.A. and Rhone Investissements S.A. v. Republic of Costa Rica* (ICSID Case No. ARB/13/2), Decision on Jurisdiction, 15 December 2014

7. *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia* (ICSID Case No. ARB/12/14 and 12/40) Decision on Jurisdiction (Churchill Mining Plc), 24 February, 2014
8. *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia* (ICSID Case No. ARB/12/14 and 12/40) Decision on Jurisdiction (Planet Mining Pty Ltd), 24 February 2014
9. *David Minnotte & Robert Lewis v. Republic of Poland* (ICSID Case No. ARB(AF)/10/1), Award, 16 May 2014
10. *El Paso Energy International Company v. The Argentine Republic* (ICSID Case No. ARB/03/15), Decision of the ad hoc Committee on the Application for Annulment of the Argentine Republic, 22 September 2014
11. *Emmis International Holding, B.V., Emmis Radio Operating, B.V., MEMMagyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. The Republic of Hungary* (ICSID Case No. ARB/12/2), Award, 16 April 2014
12. *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/19), Award, 18 November 2014
13. *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines* (ICSID Case No. ARB/11/12), Award, 10 December 2014
14. *Giovanni Alemanni and Others v. The Argentine Republic* (ICSID Case No. ARB/07/8), Decision on Jurisdiction and Admissibility (with concurring opinion), 17 November 2014
15. *Gold Reserve Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/09/1), Award, 22 September 2014
16. *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia* (UNCITRAL, PCA Case No. 2011-17), Award (corrected), 31 January 2014
17. *Hochtief AG v. The Argentine Republic* (ICSID Case No. ARB/07/31), Decision on Liability, 29 December 2014
18. *Hulley Enterprises Limited (Cyprus) v. The Russian Federation* (UNCITRAL, PCA Case No. AA 226), Final Award, 18 July 2014
19. *Impregilo S.p.A. v. Argentine Republic* (ICSID Case No. ARB/07/17), Decision of the ad hoc Committee on the Application for Annulment, 24 January 2014
20. *Lao Holdings N.V. v. Lao People's Democratic Republic* (ICSID Case No. ARB(AF)/12/6), Decision on Jurisdiction, 21 February, 2014
21. *Mobil Corporation, Venezuela Holdings, B.V., Mobil Cerro Negro Holding, Ltd., Mobil Venezolana de Petróleos Holdings, Inc., Mobil Cerro Negro, Ltd., and Mobil Venezolana de Petróleos, Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/27), Award, 9 October 2014
22. *MOL Hungarian Oil Gas Company PLC v Republic of Croatia* (ICSID Case No. ARB/13/32), Decision on Respondent's Application under ICSID Arbitration Rule 41(5), 2 December 2014
23. *National Gas S.A.E. v. Arab Republic of Egypt* (ICSID Case No. ARB/11/7), Award, 3 April 2014
24. *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/1), Award (excerpts), 30 April 2014
25. *Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa*



*Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/08/6), Decision on Remaining Issues of Jurisdiction and on Liability, 12 September 2014

26. *Renée Rose Levy de Levi v. Republic of Peru* (ICSID Case No. ARB/10/17), Award (with dissenting opinion), 26 February 2014
27. *SAUR International SA v. Republic of Argentina* (ICSID Case No. ARB/04/4), Award, 22 May 2014
28. *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay* (ICSID Case No. ARB/07/29), Decision on Annulment, 19 May 2014
29. *The Renco Group, Inc v. Republic of Peru* (UNCITRAL, UNCT/13/1), Decision as to the Scope of the Respondent's Preliminary Objections under Article 10.20.4, 18 December 2014
30. *Tulip Real Estate and Development Netherlands B.V. v. Republic of Turkey* (ICSID Case No. ARB/11/28), Award, 10 March 2014
31. *Veteran Petroleum Limited (Cyprus) v. The Russian Federation* (UNCITRAL, PCA Case No. AA 228), Final Award, 18 July 2014
32. *Vigotop Limited v. Hungary* (ICSID Case No. ARB/11/22), Award, 1 October 2014
33. *Yukos Universal Limited (Isle of Man) v. The Russian Federation* (UNCITRAL, PCA Case No. AA 227), Final Award, 18 July 2014

#### **Decisions not publicly available**<sup>30</sup>

1. *Adem Dogan v. Turkmenistan* (ICSID Case No. ARB/09/9), Award, 12 August 2014
2. *Belokon v. the Kyrgyz Republic* (UNCITRAL), Award, 31 October 2014
3. *British Caribbean Bank Limited v. The Government of Belize* (UNCITRAL), Award, 19 December 2014
4. *EURAM v Slovak* (UNCITRAL), June 2014
5. *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt* (ICSID Case No. ARB 09/15), Award, 6 May 2014
6. *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela*, (ICSID Case No. ARB/11/5), Decision on Jurisdiction, 12 February 2014
7. *Stans Energy v. Kyrgyz Republic*, Award, 30 April 2014
8. *Tatneft v. Ukraine* (UNCITRAL), Award, 29 July 2014
9. *Turkcell v. Islamic Republic of Iran* (UNCITRAL), Award, 1 January 2014

<sup>30</sup> These decisions have been reported by various news sources, but their texts are not publicly available. There may have been other decisions adopted in 2014 whose existence is not known due to the confidentiality of the dispute concerned.

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