



# IIA Issues Note

International Investment Agreements



## Facts and Figures on Investor–State Dispute Settlement Cases

### HIGHLIGHTS

- ▶ In the past 10 years, the number of treaty-based investor–State dispute settlement (ISDS) cases has more than doubled. The total count of ISDS cases brought based on investment treaties reached 1,332, with 60 new arbitrations initiated in 2023.
- ▶ Developing countries faced the majority of investor–State disputes, often brought by claimants from developed countries.
- ▶ About one third of total ISDS cases involve energy supply and extractive industries. These are the most frequent economic sectors underlying ISDS cases, followed by manufacturing, construction, and financial services.
- ▶ By the end of 2023, investors had filed a total of 235 fossil fuel-related cases and at least 123 ISDS proceedings arose in relation to the renewable energy sector.

### Developing countries face majority of investor–State disputes

ISDS cases by economic grouping, 1987–2023 (Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

# New investor–State dispute settlement cases initiated in 2023

In 2023, 60 known investor–State dispute settlement (ISDS) cases based on investment treaties were initiated (figure 1). As some arbitrations can be kept confidential, the actual number of arbitrations filed in 2023 (and previous years) is likely to be higher.

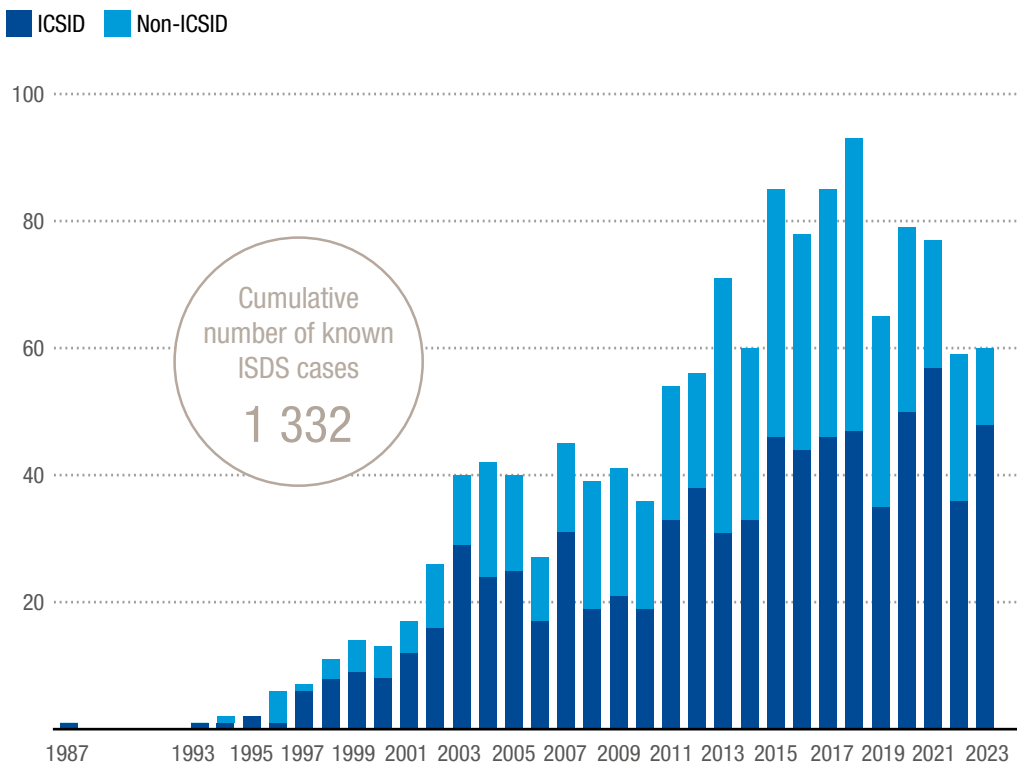
The total count of ISDS cases brought based on bilateral investment treaties (BITs) and treaties with investment provisions (TIPs) reached 1,332. In the past 10 years, the total number of ISDS cases has more than doubled. There were fewer than 600 known ISDS cases at the end of 2013, against more than 1,300 at the end of 2023.



**Figure 1**

## Investor–State dispute settlement cases surpassed 1,300 at the end of 2023

(Annual number of known treaty-based cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Note: Information has been compiled from public sources, including specialized reporting services. UNCTAD statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signalled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not match exactly case numbers reported in previous years.

Abbreviations: ICSID = International Centre for Settlement of Investment Disputes, ISDS = investor–State dispute settlement.



To date, 132 countries and one economic grouping are known to have been respondents to one or more ISDS claims. The new cases in 2023 were initiated against 37 countries and one economic grouping (the European Union, EU). About 70 per cent of them were brought against developing countries, including least developed countries (Myanmar, Senegal and the United Republic of Tanzania). Mexico was the most frequent respondent, with 10 new known cases. Honduras faced five cases, followed by Argentina and the Bolivarian Republic of Venezuela with three cases each. The largest share of claims was directed at countries in Latin America and the Caribbean, with about half of the 60 cases.

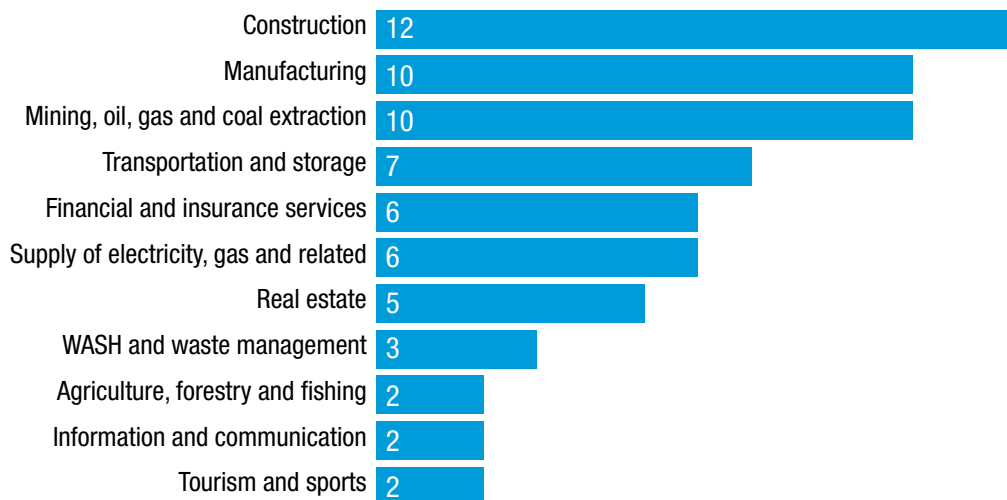
Developed-country claimants brought most – about 75 per cent – of the 60 known cases in 2023. The highest numbers of cases were brought by claimants from the United States (13), the United Kingdom (8) and Switzerland (5).

The ISDS cases filed in 2023 involved disputes related to different economic sectors (figure 2). Construction, manufacturing and extractive industries accounted for over half of them, with 10 or more cases each. These sectors often involve lengthy and asset-intensive projects, which can be prone to litigation risk.



**Figure 2**  
**Construction, manufacturing, and extraction activities account for over half of investor–State cases filed in 2023**

(Number of known cases by sector)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Notes: Some cases concerned multiple sectors.

Abbreviations: WASH = water, sanitation and hygiene.

About 70 per cent of investor–State arbitrations in 2023 were brought under BITs and TIPs signed in the 1990s or earlier. In combination, the North American Free Trade Agreement (NAFTA) (1992) and the agreement between Canada, the United States and Mexico (USMCA) (2018) were the IIAs most frequently invoked in 2023. They gave rise to 11 cases based on so-called “legacy claims” under the NAFTA. Five cases were based on the Energy Charter Treaty (ECT) (1994), followed by the Central America–Dominican Republic Free Trade Agreement (FTA) (2004) with three cases and the Association of Southeast Asian Nations–Australia–New Zealand FTA (2009) with two cases. Between 1987 and 2023, about 20 per cent of the 1,332 known ISDS cases invoked either the ECT (162 cases) or the NAFTA (92 cases).



# Outcomes of investor–State dispute settlement cases in 2023

In 2023, ISDS tribunals rendered at least 49 known substantive decisions in investor–State disputes, 28 of which were in the public domain at the time of writing. Ten of the public decisions principally addressed jurisdictional and preliminary objections.

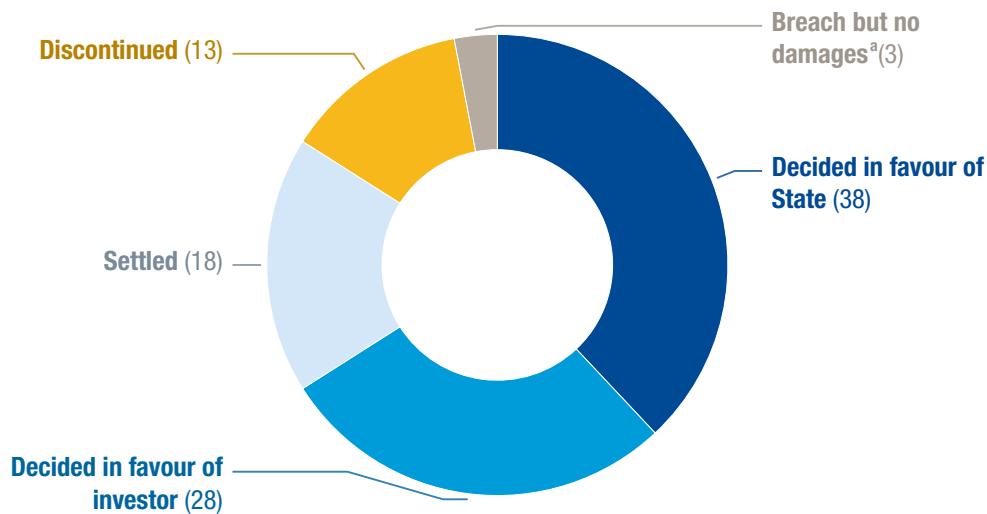
In four of them, tribunals dismissed such objections (at least in part) and continued the arbitration proceedings; in six of them, tribunals upheld the objections and ceased the proceedings for lack of jurisdiction or admissibility. Another 18 public decisions were rendered on the merits, with 9 holding the State liable for IIA breaches and 9 dismissing all investor claims. In addition, six publicly available decisions in annulment proceedings at the International Centre for Settlement of Investment Disputes (ICSID) were rendered. In all of them, the ad hoc committees of ICSID rejected the applications for annulment.

By the end of 2023, at least 958 ISDS proceedings had been concluded (figure 3). The relative share of case outcomes changed only slightly from that in previous years.



## Figure 3 Almost half of investor–State cases are decided in favour of the investor or settled

Share of concluded cases, 1987–2023  
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

<sup>a</sup> Decided in favour of neither party (liability found but no damages awarded).



# Facts and figures on investor–State dispute settlement cases

## Large damages claimed and awarded

The average amount of damages awarded has significantly increased in the past decade (UNCTAD, 2024a). On average, successful claimants were awarded about 35 per cent of the amounts they claimed as damages or compensation.<sup>1</sup> The average amount claimed was \$1.1 billion<sup>2</sup> and in cases decided in favour of the investor the average amount awarded was \$385 million.<sup>3</sup> This takes into account the principal amounts of damages, excluding interest. The pre- and post-award interest incurred on the principal amounts can also be substantial (UNCTAD, 2024a). In addition, costs for the legal representation of each party, tribunal costs and administrative fees apply.

The \$200 billion claimed in [Zeph v. Australia \(I\)](#)<sup>4</sup> and the combined \$114 billion claimed in the three cases related to the Yukos company (brought by [Hulley Enterprises](#), [Veteran Petroleum](#) and [Yukos Universal](#) against the Russian Federation) are the highest amounts sought in ISDS proceedings so far. The \$50 billion awarded in three Yukos-related cases continue to be the highest damages in the history of investment treaty arbitration. The Yukos-related ISDS awards have been subject to long-running set aside proceedings at the seat of the arbitration. Excluding these particularly large values as outliers from the calculations, the average amount claimed falls to \$753 million and the average amount awarded to \$194 million.

## Most frequent respondents and home States of claimants

Overall, developing countries faced the majority of investor–State disputes (62%), while most cases were brought by developed-country investors (81%). Looking at individual respondent States, Argentina (with 65 cases), the Bolivarian Republic of Venezuela (64 cases) and Spain (56 cases) have received the highest number of ISDS cases (figure 4). Claimants invoking the IIAs of the United States (232 cases), the Kingdom of the Netherlands (132 cases) and the United Kingdom (109 cases) initiated the most cases (figure 5).

<sup>1</sup> Information on damages claimed is available for 902 treaty-based ISDS cases, and on damages awarded for 259 cases.

<sup>2</sup> This includes the \$200 billion claimed in *Zeph v. Australia (I)* and the \$114 billion claimed in the three Yukos-related cases.

<sup>3</sup> The median amount claimed was \$143 million and the median amount awarded \$32.5 million. Some of the awarded sums may have been subject to set-aside or annulment proceedings.

<sup>4</sup> *Zeph Investments Pte. Ltd. v. The Commonwealth of Australia (I)* (PCA Case No. 2023-40), Procedural Order No. 2, 17 November 2023, para. 20.



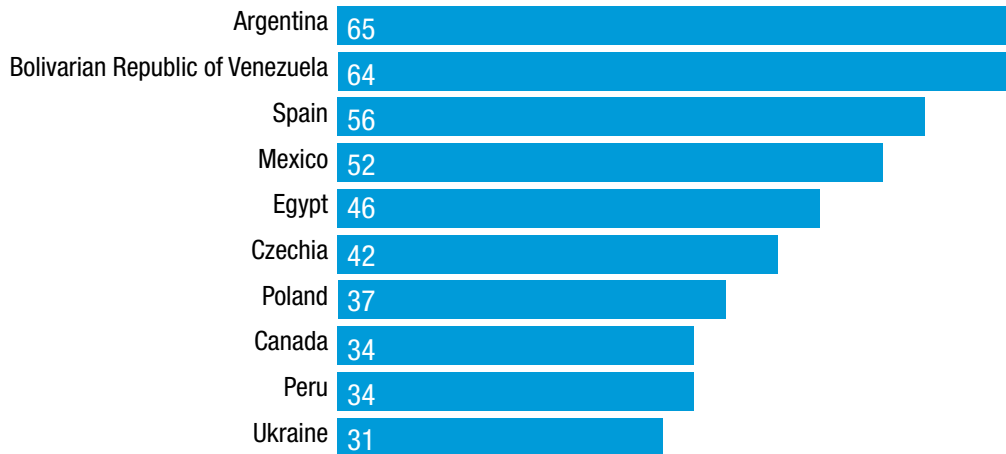


**Figure 4**

**Ten respondent States faced 35% of total ISDS cases**

Most frequent respondent States, 1987–2023

(Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

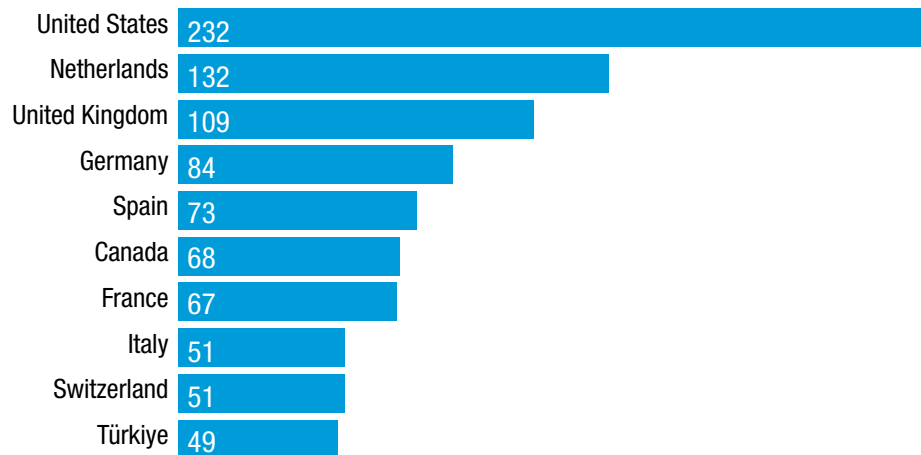


**Figure 5**

**Claimants from ten home States brought 66% of all cases**

Most frequent home States of claimants, 1987–2023

(Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Notes: Information on nationalities and home States provided by the claimants at the time of the filing of the claim, and based on the IIAs invoked in the individual cases.

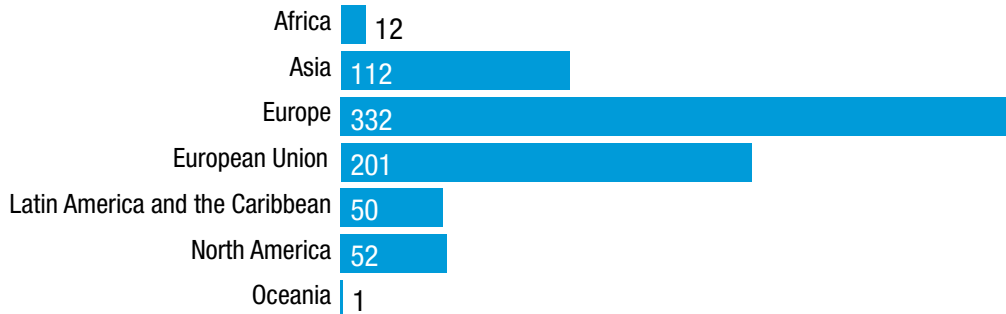
Another aspect are cases involving claimants and respondents from the same geographic region (figure 6). For example, many intra-regional disputes occur between European countries (332 cases). A large share of these are intra-EU cases brought based on BITs between EU member States and/or the ECT.





**Figure 6**  
**Europe sees largest number of intra-regional cases**

Intra-regional ISDS cases, 1987–2023  
(Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

**Main economic activities underlying ISDS cases**

About one third of ISDS cases involve energy supply and extractive industries (figure 7). These are the most frequent economic activities underlying ISDS cases, followed by manufacturing, construction, and financial activities.



**Figure 7**  
**One third of investor–State cases involve energy supply and extractive industries**

Most frequent economic activities underlying ISDS cases, 1987–2023  
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Many treaty-based ISDS cases involve different economic activities related to fossil fuels. By the end of 2023, claimants had filed at least 235 fossil fuel-related cases, accounting for almost 20 per cent of total ISDS cases. Fossil fuel-related cases included in the data encompass the following economic sectors and activities:

- mining of coal and lignite
- extraction of crude petroleum and natural gas
- power generation from coal, oil and gas
- manufacture of coke and refined petroleum products
- transportation and storage of fossil fuels



In addition to fossil fuel cases, at least 123 ISDS proceedings arose in relation to the renewable energy sector. ISDS cases in the two areas – fossil fuel and renewable energy – are particularly relevant to the sustainable energy transition.

Past energy-related cases have challenged a variety of State conduct (UNCTAD, 2023). For example, fossil fuel investors alleged treaty breaches with respect to changes in regulatory frameworks applicable to the investment and the denial or revocation of permits. Many of the renewable energy-related cases concerned legislative changes involving reductions in feed-in-tariffs for renewable energy production.

Not all of these disputes involved challenges of measures that were related to climate action or the protection of the environment. However, some recent high-profile cases concern issues that are directly relevant to countries' efforts to combat climate change.<sup>5</sup>

### Breaches of IIA provisions most frequently alleged and found

The fair and equitable treatment (FET) provision was invoked by claimants in about 85 per cent of ISDS cases for which information on breaches alleged was available, followed by indirect expropriation with 70 per cent (figure 8). In cases decided in favour of the investor, ISDS tribunals most frequently found breaches of FET (about 65 per cent) and indirect expropriation (about 30 per cent).

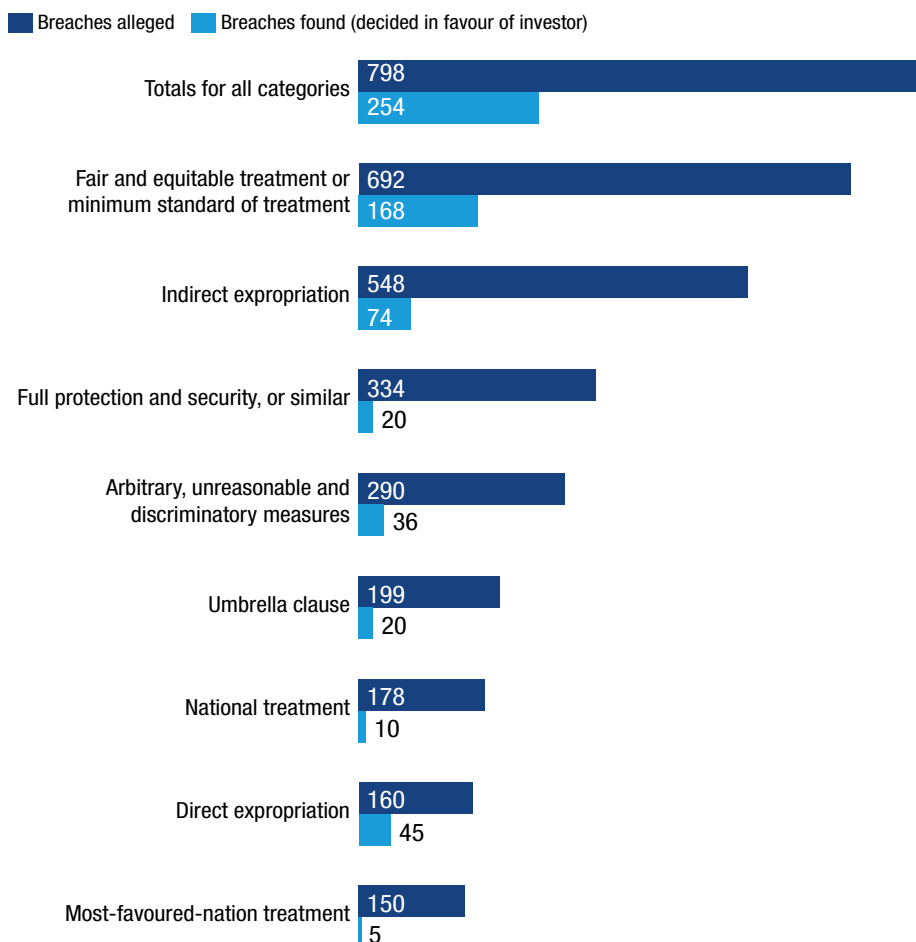


**Figure 8**

### Fair and equitable treatment is the most litigated protection standard

Breaches most frequently alleged and found, 1987–2023

(Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Note: Based on the number of cases for which such information was available.

<sup>5</sup> For example, [Westmoreland v. Canada \(II\)](#) (decided in favour of the State for lack of jurisdiction), [RWE v. Netherlands](#) (discontinued), [Uniper v. Netherlands](#) (discontinued), [Westmoreland v. Canada \(III\)](#) (pending), [Zeph v. Australia \(II\)](#) (pending).





### Most used arbitration rules and forums

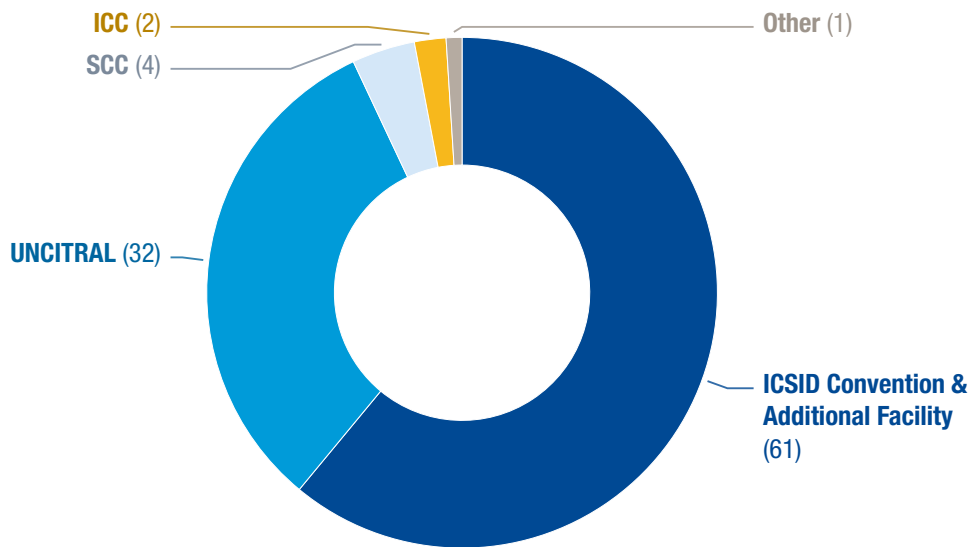
About 60 per cent of all known treaty-based ISDS cases have been filed under the ICSID Arbitration Rules (Convention) or the ICSID Additional Facility Rules, and are administered by ICSID (figure 9). The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) were the second most used procedural rules, with cases often being administered by the Permanent Court of Arbitration (PCA). The remaining cases were conducted under the Arbitration Rules of the Stockholm Chamber of Commerce (SCC), the International Chamber of Commerce (ICC), or other arbitration rules.<sup>6</sup>



#### Figure 9

#### Most cases are conducted under ICSID arbitration rules

Known cases by arbitral rules, 1987–2023  
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 25 September 2024.

Abbreviations: ICSID = International Centre for Settlement of Investment Disputes, UNCITRAL = United Nations Commission on International Trade Law, SCC = Stockholm Chamber of Commerce; ICC = International Chamber of Commerce.

<sup>6</sup> ICSID maintains a public list of cases that allows the determination of the exact number of treaty-based cases filed under the ICSID Convention and the Additional Facility Rules. The actual number of cases filed under other arbitration rules is likely to be higher than the known number of cases. This is due to the absence of a complete, public record of treaty-based cases conducted under non-ICSID rules.



This IIA Issues Note was prepared by UNCTAD's IIA team, based on research published in UNCTAD's World Investment Report 2024 (UNCTAD, 2024b). The research was conducted by Diana Rosert under the direction of Hamed El-Kady, with overall guidance from Nan Li Collins. Dafina Atanasova and Vincent Beyer provided comments and inputs.

## References

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