

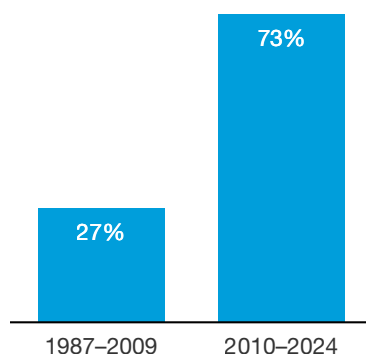
Recent trends in investor–State arbitration cases

HIGHLIGHTS

- ▶ **Investor–State arbitration cases reached 1,401.** Most of the cases – about 75 per cent – arose in the past 15 years. About 60 per cent of all ISDS cases involved damages claims of \$100 million and higher, including 143 cases in which investors sought more than \$1 billion. The past decade shows a shift towards higher damages claims and awards.
- ▶ **In 2024, investors initiated 58 arbitrations.** More than half of them related to extractive activities and energy supply. About 55 per cent of new cases were brought against developing countries. Developed-country claimants initiated most of the new cases with about 80 per cent.
- ▶ **Six cases in 2024 involved the mining of critical minerals required for the energy transition, such as copper, lithium, titanium and zinc.** From 1987 to 2024, at least 139 cases – about 10 per cent of all cases – related to different categories of critical minerals, including 51 cases relating to critical minerals required for the energy transition.
- ▶ **Claimants filed 13 fossil fuel-related cases in 2024 and initiated 6 proceedings concerning investment in the renewable energy sector.** Overall, investors have filed at least 249 cases related to fossil fuel activities, and 129 cases concerning renewable energy investments.

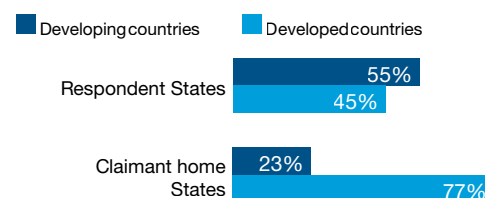


Investor–State arbitration cases proliferated after 2010



Note: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Parties involved in 2024 cases



Note: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

New cases initiated in 2024

In 2024, investors initiated 58 known ISDS cases based on IIAs¹ (figure 1). Annual caseloads have declined after a peak in 2018. As some arbitrations that are kept confidential at the time of initiation become public later in the proceedings, retroactive upwards adjustments can be expected for 2024 and preceding years. Annual case numbers initially reported between 2015 and 2022 have retroactively increased by about 20 per cent over time, incorporating previously unknown cases that surfaced after delays.

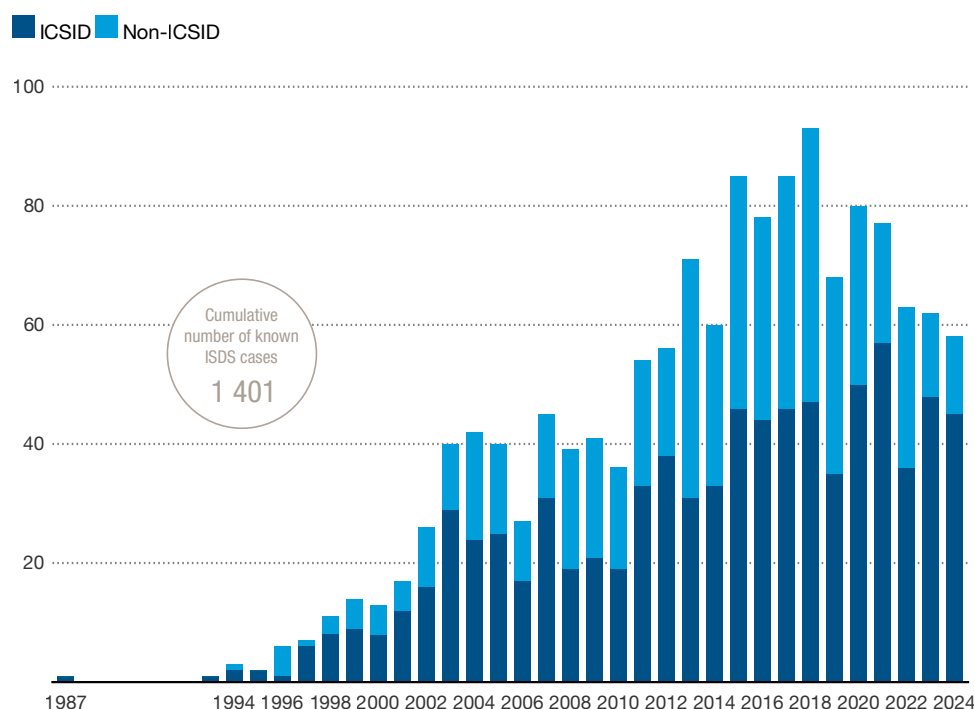
The total count of treaty-based ISDS cases reached 1,401 at the end of 2024. Three quarters of them were brought between 2010 and 2024.



Figure 1

The bulk of investor-State dispute settlement cases emerged between 2010 and 2024

Annual number of known treaty-based cases



Source: UNCTAD, ISDS Navigator database, accessed on 1 April 2025.

Note: Information compiled from public sources, including specialized reporting services. UNCTAD statistics do not cover 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 exactly match numbers reported in previous years.

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

¹ IIAs include bilateral investment treaties (BITs) and other treaties with investment provisions (TIPs).

To date, 135 countries and one economic grouping (the European Union) are known to have been respondents to one or more ISDS claims. The new cases in 2024 were initiated against 38 countries. Mexico and the Russian Federation were the respondents most frequently named, with four new cases each, followed by Honduras and Panama with three cases. Angola, Burkina Faso and Luxembourg faced their first known ISDS claims.

About 55 per cent of all new cases were brought against developing countries, including six least developed countries (Angola, Burkina Faso, Ethiopia, Mozambique, Rwanda and the United Republic of Tanzania). For context, only about one third of inward FDI stock is in developing economies. Least developed countries had less than 1 per cent of inward FDI stock in 2024.

Developed-country claimants initiated most of the 58 known cases – about 80 per cent. The highest numbers of cases were brought by claimants from the United Kingdom (10) and Canada (7). Investors from developed economies hold the largest share of outward FDI stock globally (about 80 per cent).

The amounts claimed by investors in 2024, disclosed in about one fourth of the cases at the time of research, ranged from \$17 million (*Kent Kart v. Serbia*) to \$45 billion (A\$69 billion in *Zeph v. Australia (IIII)*). At least seven cases involved claims greater than \$1 billion.

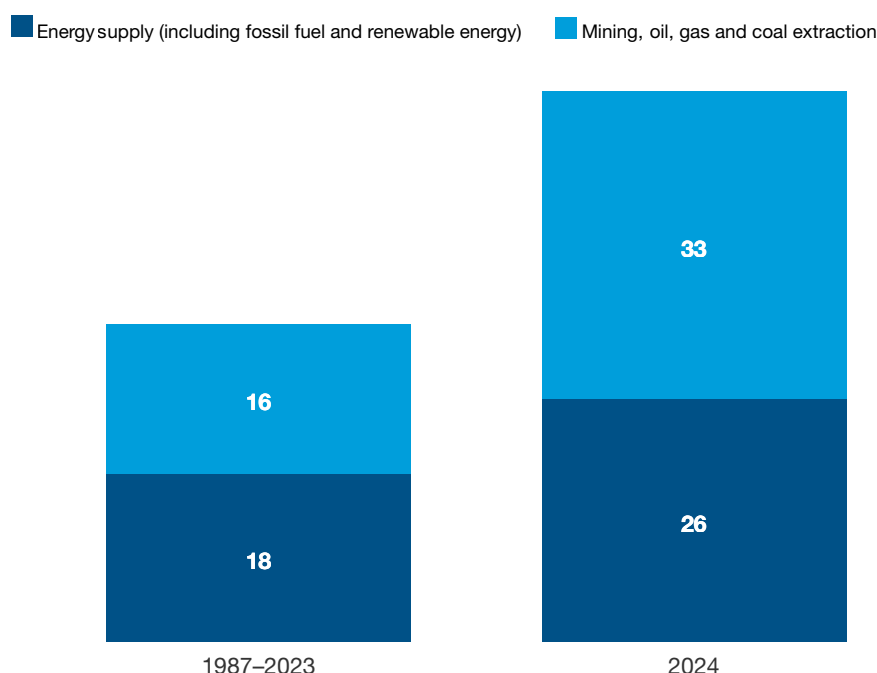
The ISDS cases filed in 2024 arose in different economic sectors, with disputes related to extractive and energy supply activities increasing to more than half of the new cases, a larger share than in previous years (figure 2). Between 1987 (when the first ISDS case based on an IIA was brought) and 2023, one third of ISDS cases related to extractive activities and energy supply.



Figure 2

The share of disputes about extractive activities and energy supply grew in 2024

Cases in these sectors as a share of all cases
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed on 1 April 2025.

Note: Some cases concerned both sectors.



Six cases in 2024 involved the mining of critical minerals required for the energy transition, such as copper (*Franco-Nevada v. Panama*, *Orla Mining v. Panama*, *Walnort Finance v. Armenia*), lithium (*Bacanora Lithium and others v. Mexico*), titanium potentially contained in heavy mineral sands deposits (*Rome Resources and IM v. Mozambique*) and zinc (*Vedanta v. India (II)*). Several cases related to the mining of other critical minerals, such as precious metals (e.g. gold and silver).

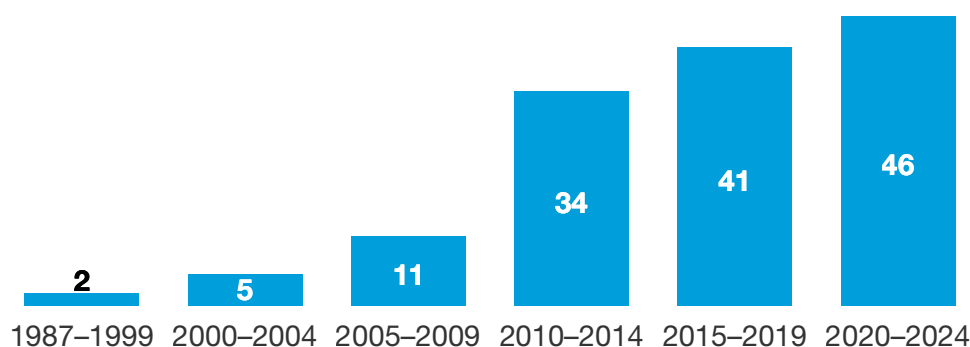
Overall, at least 139 cases – about 10 per cent of the 1,401 total cases – related to different categories of critical minerals (figure 3; figure 4).² This includes 51 cases concerning critical minerals *required* for the energy transition (e.g. aluminium, copper, zinc), 26 relate to those *relevant* for the energy transition (e.g. iron ore and steel, potassium, zirconium) and 83 to *other* critical minerals (e.g. gold, silver).³



Figure 3

Investor-State cases involving critical minerals are on the rise

(Number of cases)



Source: UNCTAD.

Note: The classification of relevant ISDS cases is based on UNCTAD's list of critical minerals by role in energy transition and other areas, available at <https://sdgpulse.unctad.org/critical-minerals/>.

² The classification of critical minerals is based on UNCTAD's list of critical minerals by role in energy transition and other areas, available at <https://sdgpulse.unctad.org/critical-minerals/>. It lists critical minerals required for the energy transition, those relevant for the energy transition, and other critical minerals.

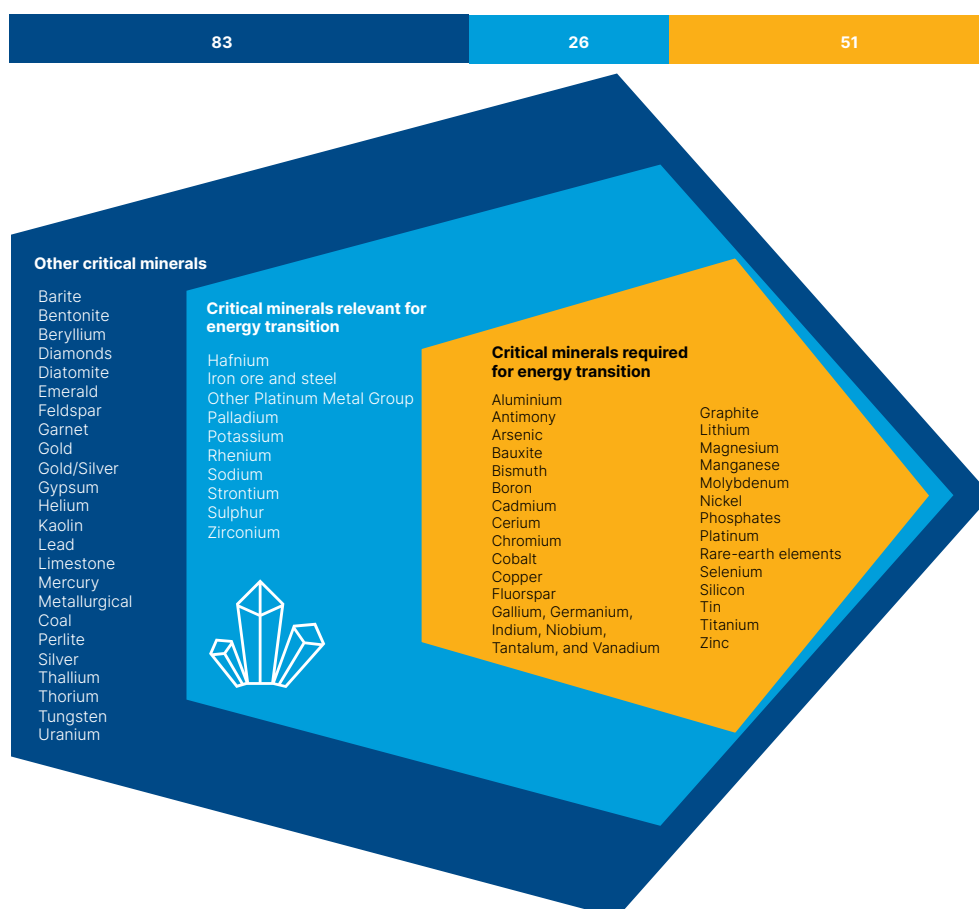
³ Some cases involved multiple categories of critical minerals and are counted under each relevant category. Without double counting, the consolidated number of cases is 139.





Figure 4 ISDS cases span different categories of critical minerals

Number of cases by category of critical minerals based on their role in the energy transition (1987–2024)



Source: UNCTAD.

Note: The classification of relevant ISDS cases is based on UNCTAD's list of critical minerals by role in energy transition and other areas, available at <https://sdgpulse.unctad.org/critical-minerals/>.

Claimants filed 13 fossil fuel-related cases in 2024, and at least 6 proceedings concerning investment in the renewable energy sector. ISDS cases in fossil fuels and renewable energy are particularly relevant to the sustainable energy transition (box 1). The share of cases related to renewable energy started growing after 2010. Spain has faced 40 per cent of these cases, which were filed primarily by solar power investors. Before 2010, only a small number of ISDS cases related to renewable energy projects, usually projects concerning hydroelectric power plants.

**Box 1****Fossil fuel and renewable energy-related dispute settlement cases based on investment agreements**

ISDS cases related to fossil fuels and renewable energy have received growing attention in light of the urgency of climate action and the need for energy transition implementation (UNCTAD, 2023).

By the end of 2024, investors had filed at least 249 fossil fuel-related cases, encompassing economic activities in the fossil fuel supply chain (mining and extraction, transportation, the manufacturing of refined products and power generation). Fossil fuel investors challenged a range of State conduct, such as alleged treaty breaches with respect to changes in regulatory frameworks applicable to the investment and the denial or revocation of permits.

Not all of these disputes involved challenges to measures related to climate action or environmental protection. However, some high-profile cases concerned issues that are directly relevant to countries' efforts to combat climate change, for example the phaseout of energy production from coal:

- Two arbitrations against Australia brought in 2024 (*Zeph v. Australia (III)* and *Zeph v. Australia (IV)*) related to the decision by the Queensland Government not to approve permits for a coal project in conjunction with a proposed coal-fired power plant. An earlier court decision recommended the refusal of the coal mining project on the basis of factors that included the contribution of the project to carbon emissions and climate change. The legal basis invoked was the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (2009).
- A 2020 Government decision to phase out coal-fired power plants is the subject of an ongoing ISDS case (*AET v. Germany*) brought against Germany in 2023 under the ECT (1994).
- The disputes in *RWE v. the Netherlands* and *Uniper v. the Netherlands* arose out of a 2019 law prohibiting the use of coal for electricity production, which required the shutdown of the claimants' coal-fired power plant at the end of a 10-year transitional period. The two cases were intra-European Union arbitrations based on the ECT and were eventually discontinued.
- Two cases against Canada (*Westmoreland v. Canada (II)* initiated in 2019 and *Westmoreland v. Canada (III)* in 2022) challenged the 2015 decision of the Alberta Government to phase out coal-fired power plants in the province by 2030. The cases were decided in favour of the State for lack of jurisdiction, under the North American Free Trade Agreement (1992) and/or the United States–Mexico–Canada Agreement (2018). Another claim brought by the same claimant was withdrawn at an early stage in 2018.

The second group of cases particularly relevant to the sustainable energy transition are the 129 ISDS proceedings that have arisen in relation to renewable energy investments. Many of these concerned legislative changes that involved reductions in feed-in tariffs for renewable energy production. Several countries that had introduced incentives to promote renewable energy investments and subsequently modified their regimes (e.g. Bulgaria, Italy, Romania, Spain) have faced ISDS cases. Spain has been the respondent in most of these cases, followed by Italy:



- At least 51 cases were brought against Spain starting in 2011. By the end of 2024, 43 were concluded and 8 were pending a final outcome; 70 per cent of the concluded cases (31 of 43) were decided in favour of the investor and Spain was ordered to pay damages to the claimants in these cases. The high share of cases won by investors stands in contrast to the overall outcomes of ISDS cases worldwide: about 29 per cent of the 1,050 total cases were decided in favour of the investor.
- Thirteen cases were brought against Italy, with four pending at the end of 2024. Of the nine concluded cases, three were decided in favour of the investor and six in favour of the State.

The outcomes of individual cases depend on the facts of each case and the circumstances surrounding the measures challenged in the respective country. Overall, however, fossil fuel and renewable energy cases show that IIAs with ISDS provisions may raise the costs of adapting energy-related regulatory frameworks in host States, including the shift away from fossil fuels. Whereas investors seek stability and guarantee of returns, States need regulatory flexibility for the transition to a low-carbon economy (UNCTAD, 2022; UNCTAD, 2023).

Source: UNCTAD.

The ECT (1994) was the IIA most frequently invoked in 2024, giving rise to nine cases. They include four initiated by a claimant from one European Union Member State against another (“intra-European Union” investor–State arbitrations). In addition, one case arose under an intra-European Union BIT. Between 1987 and 2024, about 75 per cent of the 1,401 known ISDS cases invoked BITs; the remaining cases invoked TIPs. A large share of the latter relied on the ECT (172 cases) or the North American Free Trade Agreement (1992) (92 cases).

About 85 per cent of ISDS cases in 2024 were brought under IIAs signed before 2010, including 60 per cent of cases based on treaties from the 1990s or earlier. This mirrors the fact that most investment treaties in force today (85 per cent) are pre-2010 agreements. Even as new reformed treaties enter into force, prospective claimants may still be able to access ISDS under older treaties. A significant share of new IIAs coexist with old treaties, with both in force for the same parties (e.g. with ISDS being available under a BIT and a plurilateral TIP; UNCTAD, 2023). Investors may also engage in treaty shopping by utilizing different corporate ownership structures across multiple countries (UNCTAD, 2016). When selecting the most advantageous IIA to pursue claims, an aggrieved investor may be more likely to choose an unreformed treaty that offers broader ISDS access and lacks substantive refinements than a newer reformed treaty that is equally in force.

Outcomes of investor–State dispute settlement cases

In 2024, ISDS tribunals rendered at least 78 known substantive decisions in investor–State disputes, 39 of which were in the public domain at the time of writing.

Seventeen of the public decisions principally addressed jurisdictional and preliminary objections. In 13 of them, tribunals upheld the objections and ceased the proceedings for lack of jurisdiction or admissibility; in 4, tribunals dismissed such objections (at least in part) and continued the arbitration proceedings.

Nineteen were rendered on the merits, with 11 holding the State liable for IIA breaches – typically accompanied by a compensation order – and 8 dismissing all investor claims.

Three concerned compensation after an earlier finding of treaty breaches and State liability, with two awarding compensation and one declining compensation.

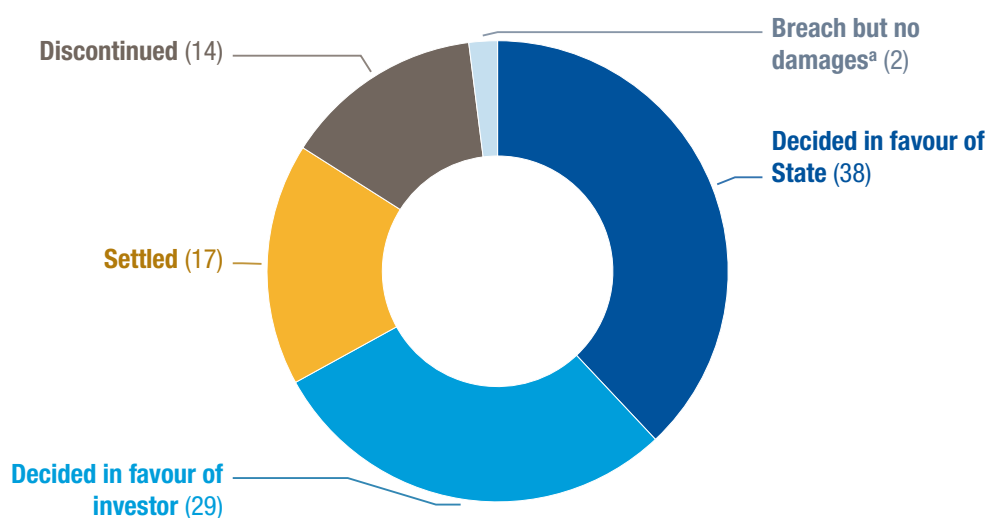
In addition, eight were rendered in annulment proceedings at the International Centre for Settlement of Investment Disputes, five of which were publicly available. In four public and three non-public decisions, the ad hoc committees of the Centre rejected the applications for annulment; in one case (*Agility v. Iraq*) the award was partially annulled.

By the end of 2024, at least 1,050 ISDS proceedings had been concluded (figure 5). The relative shares of case outcomes changed only slightly from those in previous years. Thirty-eight per cent of all concluded cases were decided in favour of the State (claims were dismissed either on jurisdictional grounds or on the merits), and 29 per cent were decided in favour of the investor, with monetary compensation awarded. Seventeen per cent of the cases were settled; in most cases, the terms of settlement remained confidential. In the remaining cases, either proceedings were discontinued (14 per cent) or the tribunal found an IIA breach but did not award monetary compensation (2 per cent).



Figure 5
Overall outcomes of concluded ISDS cases remain stable

Share of concluded ISDS cases, 1987–2024
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

^a Decided in favour of neither party (liability found but no damages awarded).

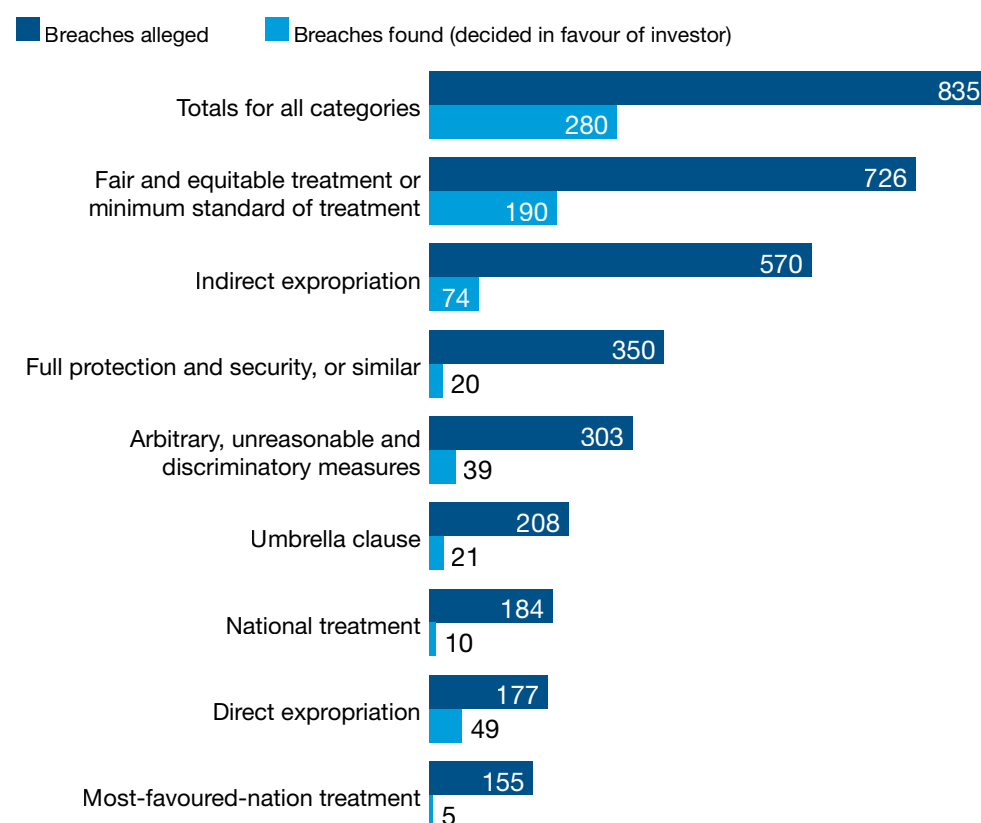
Abbreviation: ISDS, investor–State dispute settlement.

Breaches of IIA provisions most frequently alleged and found

The FET provision was invoked by claimants in about 85 per cent of ISDS cases for which information on breaches alleged was available; 70 per cent invoked the indirect expropriation provision (figure 6). In cases decided in favour of the investor, ISDS tribunals most frequently found breaches of FET (about 70 per cent) and indirect expropriation (about 25 per cent).

Figure 6 **Fair and equitable treatment is the protection standard most often litigated**

Breaches most frequently alleged and found, 1987–2024
(Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Based on cases for which such information was available since the first ISDS case based on an IIA.

Damages claimed and awarded

Amounts claimed and awarded ranged from several millions to billions of dollars. About 60 per cent of ISDS cases initiated between 1987 and 2024 involved substantial damages claims of \$100 million or more.⁴ This share included 143 cases in which claimants sought more than \$1 billion.

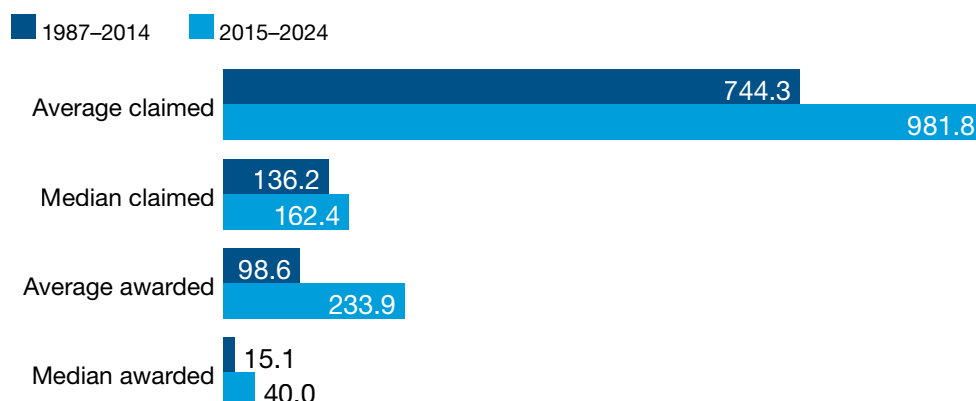
The \$200 billion claimed in *Zeph v. Australia (I)*⁵ and the combined \$114 billion claimed in the three cases related to the Yukos company (brought by Hulley Enterprises, Veteran Petroleum and Yukos Universal against the Russian Federation) were the highest amounts sought in ISDS proceedings so far. The \$50 billion awarded in the three Yukos-related cases remains the highest damages awarded in the history of investment treaty arbitration. Even when excluding these particularly large values as outliers, calculations show a shift towards larger claims and damages (figure 7).



Figure 7

Average and median values of claims and awards trended upward in the past decade

Amounts claimed and awarded in treaty-based ISDS cases
(Millions of dollars)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Principal amounts claimed and awarded, excluding pre-award and post-award interest (where possible). Calculations exclude *Zeph v. Australia (I)* and three Yukos-related cases (*Hulley Enterprises v. Russia*, *Veteran Petroleum v. Russia*, *Yukos Universal v. Russia*) as outliers. For amounts claimed, n = 528 for 1987–2014 and n = 411 for 2015–2024 by year of initiation; for amounts awarded, n = 106 for 1987–2014 and n = 179 for 2015–2024 by year of award.

Abbreviation: ISDS, investor–State dispute settlement.

Between 2015 and 2024, the average amount claimed was \$981.8 million.⁶ The median amount claimed in this period was \$162.4 million. The average amount awarded stood at \$233.9 million, with a median of \$40 million.

4 Information on damages claimed is available for 943 treaty-based ISDS cases (1987–2024), including *Zeph v. Australia (I)* and three Yukos-related cases (*Hulley Enterprises v. Russia*, *Veteran Petroleum v. Russia*, *Yukos Universal v. Russia*).

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

6 Information on damages claimed is available for 411 treaty-based ISDS cases initiated in this period, excluding the \$200 billion claimed in *Zeph v. Australia (I)* as an outlier. The three Yukos-related cases (*Hulley Enterprises v. Russia*, *Veteran Petroleum v. Russia*, *Yukos Universal v. Russia*) are outside the time frame, so the combined \$114 billion claimed in those cases is not included in the calculations.



On average, successful claimants were awarded about 25 per cent of the amounts they claimed as damages or compensation.⁷ Between 1987 and 2014, tribunals ordered payments of \$98.6 million on average, whereas in the past decade (2015–2024) the average increased to more than \$230 million. These figures are based on the principal amounts of damages awarded, excluding interest. The principal amounts may cover direct losses (e.g. lost tangible or intangible property of the investor) and the loss of projected future profits (UNCTAD, 2024). The pre- and post-award interest incurred on the principal amounts can also be substantial (UNCTAD, 2024). In addition, costs for the legal representation of each party, tribunal costs and administrative fees apply.

Arbitrator appointments

Some 411 arbitrators were appointed in treaty-based ISDS cases initiated between 2015–2024. Looking at the 12 ISDS arbitrators with most appointments, 11 hold the nationality of a developed country and 9 are men (figure 8).

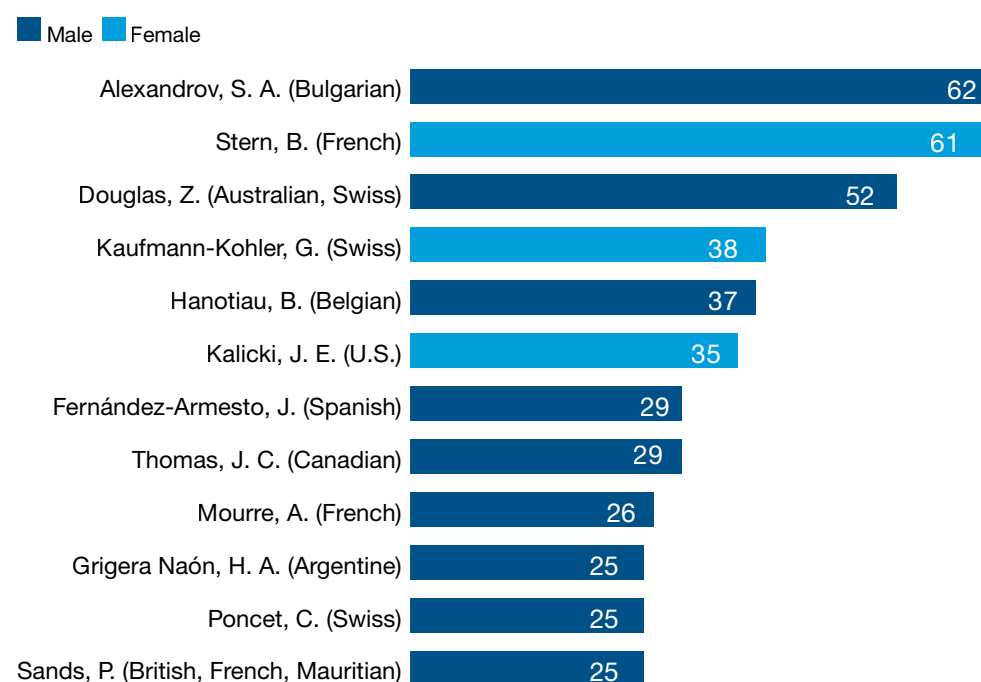
Increasing the diversity in arbitrator appointments in terms of gender and geographical representation has featured among the issues for the reform of the ISDS mechanism (UNCTAD, 2019). For example, ICSID has monitored progress on diversifying the pool of arbitrators in ICSID proceedings.⁸



Figure 8

Most frequently appointed arbitrators, 2015–2024

(Number of known appointments in treaty-based ISDS cases)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Number of publicly known appointments in ICSID and non-ICSID arbitration cases initiated between 2015 and 2024, excluding follow-up proceedings such as annulments. Information on nationality was compiled on the basis of ICSID's database of arbitrators, conciliators and ad hoc Committee members, <https://icsid.worldbank.org/resources/databases/arbitrators-conciliators-ad-hoc-committee-members>.

⁷ For 2015 to 2024, information on damages claimed is available for 411 treaty-based ISDS cases (by year of initiation) and on damages awarded for 179 cases (by year of award).

⁸ The ICSID Caseload—Statistics, Issue 2025 – 1, available at <https://icsid.worldbank.org/resources/publications/icsid-caseload-statistics>.



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IIA Issues Note

International Investment Agreements

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