
Kluwer Arbitration Blog

UNCTAD reports on latest developments in investment treaty arbitration

Andrew Newcombe (University of Victoria Faculty of Law) · Wednesday, June 2nd, 2010

UNCTAD's most recent note on investment treaty arbitration ([Latest Developments in Investor-State Dispute Settlement, IIA Issues Note No. 1 \(2010\)](#)) provides a useful overview of the growth in investment treaty arbitration and the major jurisprudential developments in 2009. According to UNCTAD, the total number of known investor-state cases under investment treaties stood at 357 at the end of 2009, including 225 at ICSID, 91 under the UNCITRAL Rules, 19 under the SCC Rules, eight administered by the Permanent Court of Arbitration, and 5 with the ICC. There are four *ad hoc* cases and one case filed with the Cairo Regional Centre for International Commercial Arbitration.

The graph in the note shows a steadily increasing investment treaty caseload, with significant increases since 2002. 57% of cases have been initiated during the past five years. The number of cases filed in 2009 (at 32) fell for the third consecutive year. Although this can hardly be described as a trend, one might wonder whether the growing body of cases dismissing claims against host states, coupled with awards of costs against unsuccessful claimants is having some chilling effect on new claims. ICSID registrations for all types of cases stand at only 11 for the first five months of 2010. That said, continued nationalizations in Latin America and potential claims relating to state measures to address the financial and economic crisis might lead to a rise in claims.

The number of state respondents to investment treaty claims also continues to rise, now standing at 81. UNCTAD reports that 49 developing countries, 17 developed countries and 15 countries with economies in transition are involved in claims. Claimants from developed states continue to predominate, but there are 23 cases from investor claimants from developing states. Argentina remains the most sued state with 51 cases against it, followed by Mexico (19), the Czech Republic (16), Ecuador (15), Canada (14), Ukraine (14) and the United States (14).

Of the 164 concluded cases, UNCTAD reports that "38 per cent were decided in favour of the State (62) and 29 per cent in favour of the investor (47), while 34 per cent (55) cases were settled".


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