

# Kluwer Arbitration Blog

## 2024 in Review: Latin America and Investment Arbitration

Daniela Páez-Salgado (Senior Assistant Editor) (Herbert Smith Freehills), Fabian Zetina (Assistant Editor for South and Central America) (BakerHostetler), and Aecio Filipe Oliveira (Assistant Editor for South and Central America) (Barbosa, Müssnich & Aragão Advogados – BMA) · Saturday, January 18th, 2025

Latin America continues to be a hotspot for investment arbitration. In 2024, investment arbitration in Latin America saw significant activity and notable developments. In addition to seeing a steady increment in arbitration cases, 2024 witnessed important legal reforms and evolving trends that are reshaping the region's approach to investment and investor-State dispute settlement ("ISDS").

This Year in Review explores these key developments.

### Steady Surge in Arbitration Cases

In the last two decades, investor-State disputes have gone from the first treaty-based ISDS case in 1987 (*AAPL v. Sri Lanka*) to 1344 publicly known cases as of December 31, 2023. South and Central America, along with Caribbean states, were involved as respondents in 380 cases, representing 28.5% of publicly available claims globally.

On August 18, 2024, the International Center for Settlement of Investment Disputes ("ICSID") released its latest edition of ICSID's [caseload statistics](#) for the fiscal year of 2024 (FY2024 runs from July 1, 2023-June 30, 2024). By mid-year, ICSID had registered 24 cases, a number comparable to those reported in 2023 (as reported in our [Year in Review 2023](#)). ICSID reported that in FY2024, South America accounted for 19% and Central America and the Caribbean for 12% of all cases, totaling 31% of registered cases of the Latam region.<sup>1)</sup>

### Legal Reforms

In 2024, Mexico elected its first female president, Claudia Sheinbaum. This election has led to various reforms and political changes. In October 2024, the [Mexican Senate approved](#) a federal energy reform that enshrines state dominance in the electricity sector within the constitution. This reform overturns previous legislation that allowed private investment in Mexico's energy.

In contrast, Argentina's Congress approved, on July 8, 2024, [legislation](#) that creates a new

investment regime. [Nahila Cortes](#) explained in detail the general aspects of the regime and what it means for the country. In sum, the law creates a new regime for owners of large investments in different sectors such as mining, technology, energy, and oil and gas, and offers significant tax and custom benefits, along with foreign exchange incentives. The law sets up a dispute resolution mechanism, allowing the State to agree to arbitration through national legislation. It permits unresolved disputes to be submitted to arbitration and includes ICSID as one of the mechanisms.

## Emerging Trends and Challenges

At the beginning of the year, [Benjamin Silva](#) reported on the tendencies in investment arbitration in Latin America discussed at the seminar “Tendencies in Investment Arbitration in Latin America: Current Issues and Challenges” organized by [CAM Santiago](#) and sponsored by the [Asociación Latinoamericana de Arbitraje \(“ALARB”\)](#) and ICSID. The speakers noted a rise in cases within the region, attributing the primary cause to political and institutional deficiencies (referring to it as the “real detonator”). Additionally, they highlighted the growing number of Latin American investors serving as claimants in investor-State disputes.

One of the emerging trends discussed was the sophistication and evolution of Latin American states’ defenses, which have largely been focused on the “state’s right to regulate”. Different states have also resorted to procedural mechanisms, more common in newer treaties, to dismiss frivolous claims.

Another topic of interest is the discussion of Environmental, Social, or Governance (“ESG”) principles and ISDS. Earlier in 2024, [Felipe Nazar](#), [Silvia de Paz](#), and [María de Arcos](#) noted an increasing number of arbitrations involving issues such as environmental permits, green incentives, social licensing requirements, and corruption. In their post, they demystify the skepticism surrounding the relationship between ESG and ISDS concluding that foreign investment, particularly in developing countries, is needed for a sustainable future.

## Notable Developments and Case Law

The year 2024 witnessed several developments and notable decisions that addressed fundamental principles of international investment law that continue to shape investment protections and state action.

- **Colombia: Mixed Decisions**

Colombia received positive and negative decisions. A key case on states’ environmental protection rights was decided in Colombia’s favor. As reported by [Estefanía Contreras](#) and [Jesus Villegas](#), in *Red Eagle v. Colombia*, the tribunal ruled that Colombia’s decisions to protect protected ecosystems such as the *páramos*, do not constitute a violation of the minimum standard of treatment vis-à-vis an investor with no vested right.

The *Seda* award was also positive for Colombia; it analyzed the functioning effect of security

exceptions. [Kilian Wagner](#) analyzed the decision in *Angel Samuel Seda and Others v. Colombia*. The tribunal found that Colombia had invoked the essential security interest exception under the United States-Colombia Trade Promotion Agreement and dismissed the Claimants' claims. Kilian observed that the award contributes to obtaining a clearer understanding of the implementation of exception clauses, although it leaves several issues unresolved.

More recently, the tribunal in *Telefónica v. Colombia* found that the State was liable for a breach of the state's obligation of fair and equitable treatment provisions contained in the Colombia-Spain bilateral investment treaty ("BIT") awarding the claimant approximately USD 380 million. Colombia [filed for annulment](#) claiming, among other reasons, a serious departure from fundamental rules of procedure. Colombia's loss led the [Government to take steps towards renegotiating arbitration clauses](#) in various free trade agreements and changing the international dispute settlement mechanism, which could include denouncing the ICSID Convention.

Finally, on the enforcement context, the Supreme Court of Colombia refused to recognize an ICSID award against Venezuela, citing that the ICSID Convention does not supersede customary international law regarding immunity from execution. Based on public information, this is the first time that the Supreme Court decided on a petition to recognize an investment award. [Maria Victoria Munevar](#), [Felipe Mutis](#), and [Valentina Buritica](#) discussed the decision [here](#).

- **Ecuador: Long Awaited Awards and Public Consultation**

On March 27, 2024, a tribunal issued its Phase II award in the *EcuadorTLC S.A. v. Ecuador II* case. As [analyzed by Gustavo Prieto](#), this arbitration arose from a contractual dispute between Ecuador and an oil consortium over the early termination of an agreement. In an interesting decision, the tribunal found that Ecuador could not re-litigate the matter based on the estoppel doctrine (*teoría de los actos propios*), which prevents parties from acting inconsistently with their prior conduct.

On April 21, 2024, the government of Ecuador conducted a referendum and public consultation on various issues, including a question regarding whether citizens agree that the Ecuadorian State should recognize international arbitration as a method for resolving disputes related to investment, contractual, or commercial matters. [David Toscano](#), [Gabriela Ortega](#), and [Sebastian Arrieta](#) [reported](#) that 65% of the population rejected the referendum. Despite the result, the referendum result does not alter the international arbitration framework. However, it reveals public opposition to a politicized view of international arbitration. In a related matter, the authors [discussed a decision](#) issued by the Constitutional Court of Ecuador on July 28, 2023. The Court declared that the [Free Trade Agreement between Ecuador and the People's Republic of China](#) was constitutional because it does not include investor-State dispute resolution mechanisms or ICSID arbitration. A previous decision from the same court was analyzed [here](#).

Early in 2024, the award in *Worley Parsons v. Ecuador* surfaced. This decision joins the repertoire of cases in which tribunals have declined jurisdiction based on corruption allegations. [Adriana Orellana](#) and [Alegría Jijón](#) [reported](#) that Ecuador challenged jurisdiction, citing several instances of alleged corruption and illegal acts committed by Worley during the investment's creation and operation, which the tribunal ultimately upheld.

---

- **Perú: Metro de Lima Wins First Award**

Earlier in 2024, a tribunal ruled on the first claim filed by Metro de Lima against Peru, awarding damages to the claimant. Although the decision is not public, a shareholder [reported](#) that the claimant received a favorable ruling. There are two additional claims ongoing related to the same dispute.

In a long-standing dispute between Rutas de Lima and Municipalidad de Lima, the latter failed to set aside two arbitral awards issued in two different arbitration proceedings. [Jorge Luis Manrique de Lara Seminario reported](#) that on March 12, 2024, the District of Columbia (“DC”) Circuit issued a decision denying Municipalidad de Lima’s petition to set aside both arbitration awards. The DC Circuit noted that to vacate an arbitral award, the proceeding must have significantly deviated from the FAA standards of fair adjudication, which according to the DC Circuit, the petitioner failed to demonstrate.

- **Central America: Honduras Withdraws From ICSID**

A significant event in Central America was Honduras’s withdrawal from ICSID. On February 24, 2024, the [World Bank received](#) a written notice of denunciation of the ICSID Convention from the Republic of Honduras. According with Article 71 of the ICSID Convention, the denunciation took effect six months after the receipt of the notice. In 2024, five additional cases were [registered by ICSID](#) against Honduras.

Guatemala faced its first conciliation proceedings under the 2022 ICSID Rules (*APM Terminals Management Barcelona, S.L.U. v Republic of Guatemala*). According to ICSID’s website, on September 6, 2024, the Conciliation Commission issued its report.

- **Bolivia: *Glencore v. Bolivia***

Bolivia received its long-awaited award in the case of *Glencore v. Bolivia*. [Luis Miguel Velarde and Tessa Hayes analyzed](#) the decision and pointed several issues such as the tribunal’s finding that Bolivia’s obligations under the [UK-Bolivia BIT](#) are unaffected by its other international human arbitrations and that the reasonability of state action in the face of social unrest must be assessed considering the state’s resources. In a separate [post](#), [Gabriel Ortega](#) emphasized the tribunal’s approach to applying the clean hands doctrine in their decision. Gabriel described the decision as an “illustrative case” of the approach to the unclean hands doctrine.

- **Mexico: Mining Disputes on the Rise**

Mexico continues to be one of the most sued countries in the region according to [ICSID’s registered](#) cases in different sectors such as oil and gas, mining, and energy. [Fernando Rodriguez-Cortina and Arturo Oropeza Casas discussed](#) earlier in the year reported that the growing interference of Mexican drug cartels in mining activities presents a potential liability to the State. They added that, over the past three years, Mexico has faced numerous mining industry investment

cases, mostly as “legacy claims” under NAFTA and that *Silver Bull Resources v. Mexico* will be the first case to adjudicate a dispute in which an international miner claims that extortion from local groups constitutes a breach of FPS. We will monitor and report in due course.

## Conclusion

The 2024 developments in international investment arbitration in Latin America are evidence of its evolving landscape. The increase in arbitration cases, along with significant legal reforms (such as those in Mexico and Argentina) and emerging trends, reflect efforts to improve the region’s arbitration framework. As Latin America adjusts its approach to arbitration, it presents both challenges and opportunities for investors, states, and practitioners.

We look forward to providing our readers with new developments in the region in 2025.

---

*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*



2024 Future Ready Lawyer Survey Report

**Legal innovation:  
Seizing the  
future or  
falling behind?**

Download your free copy →

 Wolters Kluwer

 Future Ready

**LAWYER**

## References

- <sup>1</sup> Note that ICSID includes Mexico as part of North America. Nine cases were registered against Mexico in FY2024.

---

This entry was posted on Saturday, January 18th, 2025 at 8:24 am and is filed under [2024 in Review](#), [Brazil](#), [Brazil](#), [International arbitration](#), [Investment Arbitration](#), [Latin America](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.