The Present and Future Challenges of ICSID

Vale Columbia Center on Sustainable International Investment

Meg Kinnear, Secretary-General, ICSID
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PROFIL e OF ICSID CASELOAD

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GEOGRAPHIC DISTRIBUTION OF CASES - 2012

- South America: 24%
- Central America & the Caribbean: 4%
- North America (Canada, Mexico, U.S.): 6%
- Eastern Europe & Central Asia: 26%
- Western Europe: 6%
- Sub-Saharan Africa: 14%
- Middle East & North Africa: 10%
- South & East Asia & the Pacific: 10%
## Geographic Distribution by State Party Involved – 2012

<table>
<thead>
<tr>
<th>Eastern Europe &amp; Central Asia</th>
<th>South America</th>
<th>Sub-Saharan Africa</th>
<th>Middle East &amp; North Africa</th>
<th>South &amp; East Asia &amp; the Pacific</th>
<th>North America (Canada, Mexico, U.S.)</th>
<th>Central America &amp; the Caribbean</th>
<th>Western Europe</th>
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<td>Algeria, 2</td>
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ECONOMIC DISTRIBUTION OF CASES - 2012

- Finance: 10%
- Information & Communication: 10%
- Agriculture, Fishing & Forestry: 2%
- Oil, Gas & Mining: 28%
- Electric Power & Other Energy: 8%
- Water, Sanitation & Flood Protection: 6%
- Construction: 8%
- Transportation: 4%
- Tourism: 2%
- Other Industry: 22%
Basis of Consent – 2012

- Bilateral Investment Treaty (BIT): 67%
- Investment Contract between the Investor and the Host-State: 13%
- Investment Law of the Host-State: 12%
- Energy Charter Treaty (ECT): 4%
- North American Free Trade Agreement (NAFTA): 4%
WHAT ARE THE OUTCOMES?

Arbitration Proceedings under the ICSID Convention and Additional Facility Rules – 2012

Dispute decided by Tribunal 68%

Dispute settled or proceeding otherwise discontinued 32%
Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules - Overall

- Award upholding claims in part or in full: 48%
- Award dismissing all claims: 28%
- Award deciding that the claims are manifestly without legal merit: 1%
- Award declining jurisdiction: 23%

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Disputes Decided by Arbitral Tribunals under the ICSID Convention and Additional Facility Rules - 2012

- Award declining jurisdiction: 26%
- Award dismissing all claims: 11%
- Award upholding claims in part or in full: 63%
WHAT ARE THE CHALLENGES?

• very new area
• effectively 50 years old
• and case law is only 25 years old…
SOME CURRENT ISSUES

• who are the decision-makers?
  o diversity
  o the double-hat discussion
  o power of appointment
Distribution of Appointments by ICSID and by the Parties (or Party-appointed Arbitrators) by Geographic Region

North America (Canada, Mexico & U.S.)
- Appointments by ICSID: 47
- Appointments by the Parties (or Party-appointed Arbitrators): 257

South America
- Appointments by ICSID: 43
- Appointments by the Parties (or Party-appointed Arbitrators): 105

Central America & the Caribbean
- Appointments by ICSID: 13
- Appointments by the Parties (or Party-appointed Arbitrators): 16

Middle East & North Africa
- Appointments by ICSID: 23
- Appointments by the Parties (or Party-appointed Arbitrators): 41

Sub-Saharan Africa
- Appointments by ICSID: 16
- Appointments by the Parties (or Party-appointed Arbitrators): 13

South & East Asia & the Pacific
- Appointments by ICSID: 55
- Appointments by the Parties (or Party-appointed Arbitrators): 85

Eastern Europe & Central Asia
- Appointments by ICSID: 10
- Appointments by the Parties (or Party-appointed Arbitrators): 13

Western Europe
- Appointments by ICSID: 183
- Appointments by the Parties (or Party-appointed Arbitrators): 447

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SOME CURRENT ISSUES

• consistency/predictability of awards
SOME CURRENT ISSUES

• time & cost questions
SOME CURRENT ISSUES

• alternates to arbitration
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