UNCTAD/WEB/ITE/IIA/2006/11

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
Geneva

Latest Developments in Investor-State Dispute Settlement

IIA MONITOR No. 4 (2006)
International Investment Agreements

UNITED NATIONS
New York and Geneva, 2006

IIA MONITOR
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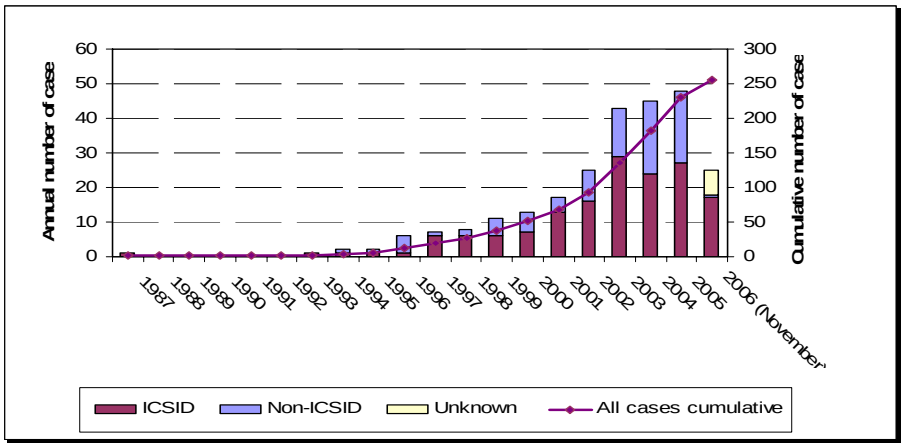
In the first 11 months of 2006, at least 25 investor-State cases were filed under international investment agreements (IIAs), 18 of which were filed with the International Centre for Settlement of Investment Disputes (ICSID).[1] If confirmed at that level, this would be the lowest number of known treaty-based cases filed since the year 2000, hinting to a considerable slow down in the number of cases launched. However, given the fact that the ICSID arbitration facility is the only facility to maintain a public registry of claims, this could also indicate a shift of arbitration activity into the less public domain of other arbitral venues.

The total cumulative number of known treaty-based cases increased to a new peak of 255 (figure 1). These disputes were filed with ICSID (or ICSID Additional Facility) (156), the United Nations Commission on International Trade Law (UNCITRAL) (65), the Stockholm Chamber of Commerce (18), the International Chamber of Commerce (4), and ad-hoc arbitration (4). One case concerned the Cairo Regional Centre for International Commercial Arbitration, and for seven cases the exact venue was still unknown at the time of writing (figure 2).

Figure 1. Known investment treaty arbitrations (cumulative and newly instituted cases, 1987 – November 2006)



Source: UNCTAD.

At least 70 governments – 44 of them in the developing world, 14 in developed countries and 12 in Southeast Europe and the Commonwealth of Independent States – have faced investment treaty arbitration (annex). Argentina still tops the list with 42 claims lodged against that it (39 of these disputes relate at least in part to that country's financial crisis) (UNCTAD 2005a). No new arbitration cases were launched against Argentina in the first 11 months of 2006, and only one notice of intent was registered at ICSID in this period. Mexico

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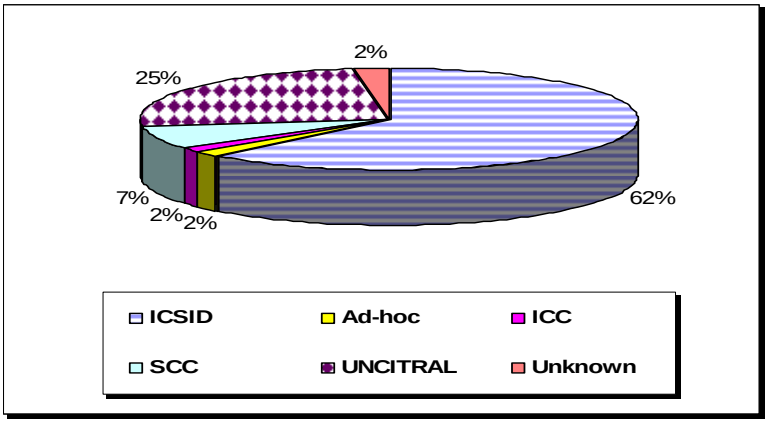
continues to have the second highest number of known claims (17); also with no new cases in 2006. The United States and the Czech Republic have the third highest number of claims filed against them with 11 each. The Russian Federation (9 claims), the Republic of Moldova (9), India (9), Egypt (8), Ecuador (8), Romania (7), Poland (7), Canada (7) and Ukraine (6) also figure prominently. Nine countries faced arbitration proceedings for the first time in 2006, with one exception all from the developing world (Azerbaijan (2 cases), the Republic of Congo, Grenada, Mali, Nicaragua, Seychelles, the Slovak Republic (2 cases), Thailand and Togo).

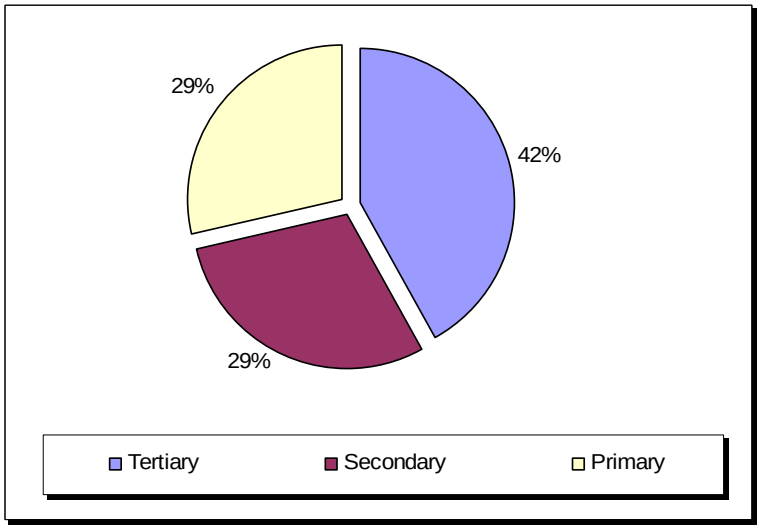
Figure 2. Disputes by forum of arbitration, cumulative as of November 2006
(Percentage)



Source: UNCTAD.
Note: SCC = Stockholm Chamber of Commerce; ICC = International Chamber of Commerce.

A little less than half of the cases (42 %) involved the services sector, including electricity distribution, telecommunications, debt instruments, water services and waste management (figure 3). All primary sector cases relate to mining and oil and gas exploration activities.

Figure 3. Sectors involved in known investment treaty arbitration
(Percentage)



Source: UNCTAD.

As far as the substantive implications are concerned, tribunals in 2006 rendered significant decisions:

On most-favoured-nation treatment, two decisions (*Suez, Sociedad General de Aguas de Barcelona SA et al v. The Argentine Republic* and *National Grid plc v. The Argentine Republic*) permitted investors to avail themselves of a more favourable (i.e. shorter) waiting period before launching an international arbitration. This is in line with the approach taken by the *Maffezini* case in 2000. However, two other decisions, *Vladimir Berschader and Michael Berschader v. Russian Federation* and *Telenor Mobile Communications A.S. v. Republic of Hungary* denied the investors' claim to borrow the more favourable consent-to-arbitration clause found in other investment treaties endorsing the more recent approach taken by the *Plama* tribunal in 2005.[2] The two BITs at issue in the latter cases provided in fact for investor-state arbitration for expropriation claims only and the investors had argued that through the most-favoured-nation provision they could expand the tribunal's jurisdiction to include other treaty standards.

On fair and equitable treatment, several recent decisions have upheld and reinforced a broad acceptance of the FET standard in line with the often-cited *Tecmed* award in 2003. In *LG&E v. the Argentine Republic*, for example, the tribunal affirmed that the "*fair and equitable standard consists of the host State's consistent and transparent behaviour, free of ambiguity that involves the obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor*."[3] This reading is in line with the other awards rendered in 2006 in *Azurix v. The Argentine Republic* and *Saluka v. The Czech Republic*.[4] Moreover in *Thunderbird v. Mexico*, the breach of the investor's legitimate expectations would have provided the basis for a violation of the minimum standard of treatment as provided for in Article 1105 NAFTA.[5] However, a majority of the tribunal in that case found that the Mexican Government's conduct did not generate a legitimate expectation upon which the foreign investor could reasonably rely. Worth mentioning is also the statement in *Saluka* that the fair and equitable treatment standard "*cannot easily be assumed to include a general prohibition of State aid*."[6]

On expropriation, decisions rendered in 2006 demonstrate that a claim of expropriation may give rise to two types of issues, one referring to the question of whether a regulation results in expropriation and the other concerning the lawfulness of the expropriation itself. In addressing the first question, one recent decision (*LG&E v. The Argentine Republic*) dealing with a case of indirect expropriation focused on balancing two competing interests: the degree of the measure's interference with the right of ownership and the power of the State to adopt its policies. In evaluating the degree of the measure's interference with the investor's right of ownership, the two key elements were the measure's economic impact (i.e. effective change of control or ownership of the investment, interference with the investor's reasonable expectations) and the measure's duration.[7] This approach is in line with previous awards such as those in *SD Myers v. Canada*, *Feldman v. Mexico* and *Tecmed v. Mexico*. To be noted is also the statement of the tribunal in *EnCana v. Ecuador* that places taxation in a special category for purposes of a claim of expropriation, i.e. "*only if a tax law is extraordinary, punitive in amount and arbitrary in its incidence would issues of indirect expropriation be raised*".[8]

In another decision (*ADC Affiliate and ADC & ADMC Management Limited v. The Republic of Hungary*) dealing with a case of direct expropriation, the tribunal focused on whether the expropriation (a) had been taken in the public interest; (b) respected the due process principle;

(c) was non-discriminatory; and (d) was accompanied by payment of just compensation. In that case, the tribunal found that the Government's take-over of the investor's activities concerning the operation of two terminals at Budapest airport did not comply with any of the above conditions.[9]

Of the seven decisions rendered in 2006 that examined claims based on expropriation only one decided in favour of the investor (*ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*), while six rejected such claims (*EnCana v. Ecuador, Saluka v. Czech Republic, LG&E v. Argentina, Azurix v. Argentina, Thunderbird v. Mexico, Telenor Mobile Communications v. Hungary*). Three of the six tribunals that rejected the expropriation claims, nonetheless found that the host countries had violated other treaty provisions, in particular the fair and equitable treatment standard (*Saluka, LG&E* and *Azurix*).

On the "umbrella clause", recent decisions have emphasized once more the divergent views followed by arbitral tribunals since the issue was first decided in *SGS v. Pakistan*. The tribunals in *El Paso v. The Argentine Republic* and *BP-Pan American v. The Argentine Republic* concluded that the so called 'umbrella clause' in the United States-Argentina BIT could not transform any contract claims into breaches of international law.[10] On the other hand, in *LG&E v. The Argentine Republic*, the tribunal held that Argentina's abrogation of certain contractual undertakings gave rise to international liability under the 'umbrella clause' of that treaty. The tribunal in *Azurix v. The Argentine Republic* rejected the investor's claim based on the umbrella clause emphasizing that the claimants were not party to the original contract with the State.[11]

On the "state of necessity", in the *LG&E* award the tribunal accepted Argentina's defense that its actions following the financial crisis in the late 1990s were taken due to a state of necessity that imperiled the essential interests of the country at the time. Although the tribunal found that Argentina's actions breached some of the investment protection provided for in the relevant BIT, it absolved Argentina from liability for losses caused during the period of necessity (which the tribunal estimated to have lasted for eighteen months). This decision notably contradicts the 2005 award in *CMS v. The Argentine Republic* which, although based on almost identical facts, had not accepted the 'state of necessity' defense ruling that the essential interests of the state do not include economic issues and in any event the crisis was not severe enough to warrant the measures taken (the annulment proceedings against the CMS award are still pending).

In terms of damages, a few awards in 2006 are noteworthy, among which:

- In July 2006, an ICSID tribunal awarded *Azurix* $165 million after finding the Argentine Republic to be in breach of the United States-Argentina BIT. The investor had originally claimed $665 million.

- In October 2006, an ICSID tribunal awarded Cyprus-based *ADC Limited* $76.2 million after finding Hungary in breach of its obligation under the Cyprus-Hungary BIT. The investor had originally claimed $244.3 million.

Although in *LG&E* and *Saluka* the tribunals decided in favour of the investor, the respective tribunals have yet to determine the amount of damages to be awarded at a subsequent stage.[12]

An interesting development with regard to determination of damages may be found in the *ADC* award. The ADC tribunal determined that Article 4 of the Cyprus-Hungary BIT on expropriation stipulated only the standard of compensation payable in case of a *lawful* expropriation and that applying this standard to a case of *unlawful* expropriation (as in the case at hand) would have been inappropriate.[13] Accordingly, the tribunal applied the customary international law standard set out in the decision of the PCIJ in the *Chorzów Factory* case and on that basis decided to assess the value of the expropriated property at the date of the award rather than at the date of expropriation (1 January 2002).[14]

Looking at the 21 disputes that have reached a conclusion in 2006 (either rejecting the investor's claims or awarding damages to the affected investor),[15] out of a total of $1.63 billion in claimed damages, tribunals have awarded a total of $241.2 million (approximately 15 %).[16]

As far as ***the allocation of costs and attorney's fees*** by tribunals are concerned, a few recent decisions are also noteworthy. At least four decisions seem to reinforce the recent trend that allocates (at least part of) the legal fees and arbitration costs to the losing party, whether the State or the investor.

- The *ADC* tribunal in its decision of 2 October 2006 awarded the burden of the full costs totaling $7.6 million to the defending country that had been found to have breached its treaty obligations, including the investor's legal costs.

- The *Telenor* tribunal in its decision of 13 September 2006 awarded the burden of the full costs totalling $1.25 million to the unsuccessful claimant, including Hungary's legal costs.

- In *Thunderbird*, a majority of the tribunal required the losing claimant to cover three quarters of the arbitration costs and the legal fees incurred by Mexico in its successful defense.

- In *Azurix*, the tribunal required each party to bear its own legal costs but awarded the burden of all the arbitration costs to be borne by the losing State.

However, in *EnCana v. Ecuador* and *Salini v. Jordan*, the tribunal required each party to bear its own costs (in both cases, the tribunal had rejected the investor's claims).

A new development worth mentioning is the final award rendered on 2 August 2006 in the *Inceysa Vallisoletana S.L. v. Republic of El Salvador* case. The tribunal accepted that El Salvador's consent to ICSID jurisdiction embodied in the Spain-El Salvador BIT did not extend to investments that were made fraudulently, and therefore not in accordance with the law. The tribunal relied both on the express language of the Spain-El Salvador BIT and on references in the *travaux preparatoires* to investments complying with local law as a precondition to benefiting from that treaty's protection. Although prior ICSID decisions (*Tokios Tokeles v. Ukraine* and *Salini Construttori S.p.A. v. Kingdom of Morocco*) had briefly addressed the function of 'accordance with law' clauses in investment treaties, the decision in this case is believed to be the first to apply such clauses for purposes of determining the tribunal's jurisdiction.[17] It is interesting to note that out of the fourteen decisions on jurisdiction rendered in 2006[18] the award in *Inceysa* is only one of two instances in which the

tribunal upheld in full the respondent State's objections to jurisdiction dismissing the investor's claims in their entirety.[19]

On Third-Party participation, the trend towards admitting (at least in principle) the submission of *amicus curiae* briefs continued. The tribunal in *Suez & InterAguas v. The Argentine Republic* noted that a tribunal has the power to accept such briefs if certain conditions are present. With regard to oral submissions by third parties (including NGOs), however, the *Suez* tribunal recognized that this is not in a tribunal's discretionary power unless disputants give express permission.

This trend is reflected in the recent changes to ICSID Arbitration Rules, which will apply to ICSID arbitrations in which the date of consent to arbitration is on or after 10 April 2006. Amendments to Rule 37 add, for the first time, procedures and standards by which tribunals shall consider requests from third parties to file *amicus curiae* briefs to address issues that may not adequately be addressed by the parties (e.g. environmental or other public policy issues). Notably, a tribunal can decide to accept the submission of an amicus brief by a third party even if the parties object. The tribunal is, however, required to consult both parties before ruling on the amicus request. In determining whether to accept a third-party submission, the tribunal must consider: (a) whether the non-party has a "significant interest" in the proceeding; (b) whether the submission addresses "*a matter within the scope of the dispute*"; and (c) how the submission would help resolve a legal or factual issue before the tribunal by "*bringing a perspective, particular knowledge or insight*" different from those provided by the parties.

Amendments to Arbitration Rule 32 authorize tribunals to allow third parties to attend or observe oral hearings, but only if none of the parties to the proceedings object. An earlier version of the amendment to Rule 32, which proposed allowing tribunals to open hearings to the public over the parties' objections, was rejected. In addition, the new rule requires tribunals presiding over open proceedings to "*establish procedures for the protection of proprietary or privileged information*".

Noteworthy in this respect is Order n°3 in *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania* rendered on 29 September 2006. This Order represents the first ruling in an ICSID proceeding on public availability of records of hearings, documents produced by the parties, party submissions and correspondence, orders and awards subsequent to the Amendments to ICSID Arbitration Rules. The Tribunal emphasized that in the absence of any agreement between the parties regarding confidentiality, there is no general rule imposing either a general duty of confidentiality or transparency in ICSID arbitration.[20]

In terms of ***review of arbitral awards***, in 2006 two annulment proceedings under ICSID were concluded with at least one application for annulment being successful. In *Patrick Mitchell v. Democratic Republic of the Congo*, the *ad hoc* Committee annulled the 2004 arbitral award in its entirety on the grounds of "manifest excess of powers" and "failure to state reasons" owing to the decision of the original arbitral tribunal to accept its jurisdiction on the basis of the existence of an investment within the meaning of the ICSID Convention.[21] At the time of writing, there are at least five other annulment proceedings still pending before ICSID (*MTD v. Chile*, *Repsol v. Ecuador*; *Soufraki v. UAE*; *Lucchetti v. Peru*; *CMS v. Argentina*).

Furthermore, the last fifteen months have also witnessed a relative increase in the number of domestic court decisions reviewing arbitral awards on the basis of a limited set of grounds

under domestic law (usually the law where the arbitration took place or *lex arbitri*). Most of these challenges have been brought by the losing State[22] and none has so far been successful.

* * *

The surge in investment disputes arising from IIAs in and by itself is not necessarily an unhealthy development – after all, it is an expression of the rule of law, and hence an expression of the fact that IIAs "work" towards creating a favorable investment climate in host countries. Obviously, increases in international investment flows lead to more occasions for disputes, and more occasions for disputes combined with more IIAs are likely to lead to more cases. Furthermore, the greater complexity of recent IIAs leads to more regulatory difficulties in their proper implementation.

However, there have been some concerns and implications for developing countries. Their vulnerability is based on their limited technical capacity to handle investment disputes, the potentially high costs involved of conducting such procedures, and the potential impact of awards on the budget and a country's reputation as an investment location. Technical assistance seems required to enable countries to manage effectively and efficiently investor-State disputes as part of an overall endeavor to improve the investment climate and ensure that IIAs contribute to their efforts to attract and benefit from foreign investment for development.

NOTES

[1] This number does not include cases where a party signaled its intention to submit a claim to arbitration, but has not yet commenced the arbitration (notice of intent); if these cases are submitted to arbitration, the number of pending cases will increase. See UNCTAD 2005a and 2005b.

[2] See the *Telenor* decision: "*The tribunal therefore concludes that in the present case the MFN clause cannot be used to extend the tribunal's jurisdiction to categories of claim other than expropriation, for this would subvert the common intention of Hungary and Norway in entering into the BIT in question*" (*Telenor*, paragraph 100).

[3] See the *LG&E* decision: "[…] *Having created specific expectations among investors, Argentina was bound by its obligations concerning the investment guarantees vis-à-vis public utility licensees, and in particular, the gas distribution licensees. The abrogation of these specific guarantees violates the stability and predictability underlying the standard of fair and equitable treatment*" (*LG&E*, paragraph 133).

[4] See the *Azurix* decision: "[…] *there is a common thread in the recent awards under NAFTA and Tecmed which does not require bad faith or malicious intention of the recipient State as a necessary element in the failure to treat investment fairly and equitably.* […] *It is also understood that the conduct of the State has to be below international standards but those are not at the level of 1927. A third element is the frustration of expectations that the investor may have legitimately taken into account when it made the investment.* […] *To encourage and protect investment is the purpose of the BIT. It would be incoherent with such purpose and the expectations created by such a document to consider that a party to the BIT has breached the obligation of fair and equitable treatment only when it has acted in bad faith or its conduct can be qualified as outrageous or egregious.*" (*Azurix*, paragraph 372). See also the *Saluka* decision: "*The Czech Republic, without undermining its legitimate right to take measures for the protection of the public interest, has therefore assumed an obligation to treat a foreign investor's investment in a way that does not frustrate the investor's underlying legitimate and reasonable expectations. A foreign investor whose interests are protected under the Treaty is entitled to expect that the Czech Republic will not act in a way that is manifestly inconsistent, non-transparent, unreasonable (i.e. unrelated to some rational policy), or discriminatory (i.e. based on unjustifiable distinctions). In applying this standard, the tribunal will have due regard to all relevant circumstances*." (*Saluka*, paragraph 309).

[5] See the *Thunderbird* decision: "[…] *the concept of 'legitimate expectations' relates, within the context of the NAFTA framework, to a situation where a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages*." (*Thunderbird*, paragraph 147).

[6] *Saluka*, paragraph 445.

[7] *LG&E*, paragraphs 189-190.

[8] *Encana*, paragraph 177.

[9] *ADC*, paragraph 476.

[10] See the decision in *El Paso*: "*These far-reaching consequences of a broad interpretation of the so-called umbrella clauses, quite destructive of the distinction between national legal orders and the international legal order, have been well understood and clearly explained by the first tribunal which dealt with the issue of the so-called 'umbrella clause' in the SGS v. Pakistan case and which insisted on the theoretical problems faced. It would be strange indeed if the acceptance of a BIT entailed an international liability of the State going far beyond the obligation to respect the standards of protection of foreign investments embodied in the Treaty and rendered it liable for any violation of any commitment in national or international law 'with regard to investments'*." (*El Paso*, paragraph 82).

[11] *Azurix*, paragraph 384.

[12] In November 2006, the parties have reached a settlement according to which the tribunal cannot award damages higher than 7 billion Czech crowns (equivalent to $332 million).

[13] *ADC*, paragraphs 480-482.

[14] The tribunal noted that this case was "unique" since the value of the investment after the date of expropriation increased very considerably, while usually the value of the investment declined after the interference of the State. The tribunal reasoned that "*to put the Claimants in the same position as if the expropriation had not been committed*" (as required by the *Chorzów Factory* standard), in the present, *sui generis*, type of case the date of valuation should be the date of the Award and not the date of expropriation. In support of this approach, the tribunal referred to the statement of the PCIJ in the *Chorzów Factory* case, according to which damages are "*not necessarily limited to the value of the undertaking at the moment of dispossession*." (*ADC*, paragraphs 496-497).

[15] *EnCana* (claims rejected on the merits), *Thunderbird* (claims rejected on the merits), *Telenor* (claims rejected on the merits), *Salini v. Jordan* (claims rejected on the merits), *Inceysa* (tribunal lacked jurisdiction), on the one hand, and *ADC* and *Azurix*, on the other hand.

[16] *Azurix* and *ADC*.

[17] In a similar vein, in *WDF v. Kenya*, a contract dispute (i.e. not based on an investment treaty), the tribunal acknowledged that international law will not allow either party to enforce a contract obtained through corruption as a matter of public policy. This decision resulted in the country avoiding liability under the contract even though the Head of State was complicit in accepting the bribe.

[18] *Suez et al v. Argentina*, *Continental Casualty v. Argentina*, *Suez, Vivendi et al v. Argentina*, *Pan American Energy et al v. Argentina*, *National Grid v. Argentina*, *El Paso Energy International v. Argentina*, *Metalpar et al v. Argentina*, *Grand River Enterprises Six Nations v. United States*, *Jan de Nul et al v. Egypt*, *Canfor Corp v. United States*, *L.E.S.I. S.p.A. et al v. Algeria*, *Inceysa v. El Salvador*, *Telenor v. Hungary*, and *Duke Energy Internacional Peru Investments No 1 v. Peru*.

[19] The award in *Telenor* also rejected the investor's claim for lack of jurisdiction.

[20] See Biwater, paragraph 121.

[21] The other decision was rendered in January 2006 in the annulment proceeding in *Consortium R.F.C.C. v. Kingdom of Morocco*. However, the decision on annulment is not publicly available.

[22] The cases brought by States include: *Czech Republic v. Saluka Investments* (Swiss Supreme Court, 17 September 2006); *Republic of Ecuador v. Occidental Export and Petroleum* (London High Court, 2 March 2006; pending before Court of Appeal); *Lebanon v. France Telecom* (Swiss Supreme Court, 10 November 2005); *The Russian Federation v. Sedelmayer* (Svea Court of Appeal, 15 June 2005); *Poland v. Eureko* (Brussels District Court, 24 November 2006). On the other hand, the investor challenged the jurisdiction decision in *Nagel v. Czech Republic* before Swedish courts (Svea Court of Appeal, 30 May 2005).

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Annex 1: Known investment treaty claims, by defendants (November 2006)

Defendant	Number of claims
Argentina	42
Mexico	17
Czech Republic	11
United States	11
Moldova, Republic of	9
Russian Federation	9
India	9
Ecuador	8
Egypt	8
Canada	7
Poland	7
Romania	7
Ukraine	6
Chile	4
Congo, Democratic Republic of	4
Kazakhstan	4
Venezuela	4
Estonia	3
Hungary	3
Kyrgyz Republic	3
Pakistan	3
Turkey	3
Algeria	2
Azerbaijan	2
Bangladesh	2
Bolivia	2
Burundi	2
Georgia	2
Jordan	2
Latvia	2
Lebanon	2
Malaysia	2
Morocco	2
Peru	2
Philippines	2
Slovak Republic	2
Slovenia	2
Sri Lanka	2
United Arab Emirates	2
Albania	1
Barbados	1
Bulgaria	1
Congo, Republic of	1
Croatia	1
El Salvador	1
France/United Kingdom	1
Germany	1
Ghana	1
Grenada	1

Guyana	1
Indonesia	1
Lithuania	1
Mali	1
Mongolia	1
Myanmar	1
Nicaragua	1
Paraguay	1
Portugal	1
Saudi Arabia	1
Serbia-Montenegro	1
Seychelles	1
Spain	1
Tanzania, United Republic of	1
Thailand	1
Togo	1
Trinidad and Tobago	1
Tunisia	1
Viet Nam	1
Yemen	1
Zimbabwe	1
Unknown	9
Total	**255**

Source: UNCTAD.

Annex 2: List of cases reviewed

ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary, ICSID Case No. ARB/03/16, Award, 2 October 2006.

Azurix Corp. v. Argentine Republic, ICSID Case No. ARB/01/12, Award, 14 July 2006.

Berschader & Berschader v. The Russian Federation (Arbitration Institute of the Stockholm Chamber of Commerce).

Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, Procedural Order No. 1, 31 March 2006; Procedural Order No. 3, 29 September 2006.

Canfor Corp. v. United States of America, UNICITRAL, Decision on Preliminary Question, 6 June 2006.

CMS Gas Transmission Company v. Argentine Republic, ICSID Case No. ARB/01/8, Decision on Jurisdiction, 17 July 2003; Award, 12 May 2005.

Consortium R.F.C.C. v. Kingdom of Morocco, ICSID Case No. ARB/00/6, Decision on Annulment, 18 January 2006 (not public).

Continental Casualty Company v. Argentina, ICSID Case No. ARB/03/9, Decision on Jurisdiction, 22 February 2006.

Duke Energy International Peru Investments No. 1, Ltd. v. Peru, ICSID Case No. ARB/03/28; Decision on Jurisdiction, 1 February 2006.

El Paso Energy International Company v. The Argentine Republic, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006.

Emilio Agustin Maffezini v. The Kingdom of Spain, ICSID Case No. ARB/97/7, Decision on Jurisdiction, 25 January 2000; Award, 13 November 2000; Rectification of Award, 31 January 2001.

EnCana Corporation v. Republic of Ecuador, LCIA Case No. UN3481, UNCITRAL, Award, 3 February 2006.

Grand River Enterprises Six Nations, Ltd., v. United States, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006.

Inceysa Vallisoletana S.L. v. Republic of El Salvador, ICSID Case No. ARB/03/26, Award, 2 August 2006.

International Thunderbird Gaming Corp. v. The United Mexican States, UNCITRAL, Award, 26 January 2006.

Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006.

LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006.

LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB/02/1, Decision of the Arbitral Tribunal on Objections to Jurisdiction, 30 April 2004, Decision on Liability, 3 October 2006.

Marvin Roy Feldman v. The United Mexican States, ICSID Case No. ARB(AF)/99/1, Award on Merits, 16 December 2002.

Metalpar S.A. and Buen Aire S.A. v. Argentine Republic, ICSID Case No. ARB/03/5, Decision on Jurisdiction, 27 April 2006.

National Grid plc v The Argentine Republic, UNCITRAL, Decision on Jurisdiction, 20 June 2006.

Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic, ICSID Case No. ARB/03/13 and *BP America Production Co. and Others v. Argentine Republic*, ICSID Case No. ARB/04/8. Decision on Preliminary Objections, 27 July 2006.

Patrick Mitchell v. Democratic Republic of the Congo, ICSID Case No. ARB/99/7, Decision on Annulment, 1 November 2006.

Plama Consortium Limited v. Republic of Bulgaria, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005.

S.D. Myers, Inc. v. Canada, UNCITRAL, First Partial Award, 13 November 2000.

Salini Construtorri S.p.A. and Italstrade S.p.A. v. Morocco, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001.

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