International Centre for Settlement of Investment Disputes (ICSID)

Globalization in Latin America: Business Climate and Dispute Resolution
Cornell University Law School
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Who Are We?

- One of the 5 organizations of the World Bank Group
  - ICSID (*established in 1966*)

- ICSID has 143 Contracting States
What Do We Do?

- ICSID provides facilities for conciliation and arbitration of investment disputes between a State and a national of another State.

- ICSID works to promote international investment for development by providing investors and States with an independent forum for dispute settlement.
ICSID’s Current Caseload

- 127 pending arbitration cases
- 1 pending conciliation case
Who can be a party to an ICSID Convention case?

- Contracting States
- Nationals of other Contracting States
What types of disputes can be brought to ICSID?

- Legal disputes arising directly out of an investment
Consent — main condition for ICSID arbitration

- Sources of Consent to ICSID Arbitration
  - Contracts
  - Investment Laws
  - Bilateral Investment Treaties
  - Multilateral Agreements (NAFTA, ECT)
Why so many new cases?
ICSID and Investment Treaties

- How has ICSID’s caseload been transformed?
  - 2,500+ bilateral investment treaties signed by States from all the regions of the world
  - Most of these treaties include consents to ICSID arbitration

- How has the conduct of proceedings changed?
In which ways has ICSID’s caseload been transformed?
Effect of Treaties’ Consents on ICSID’s Caseload

- 263 cases registered in 42 years
- 235 (85%) registered in the last 10 years
- 191 arbitration proceedings under treaties
ICSID Pending Cases: By region

- 28% Argentina
- 18% Europe
- 15% NAFTA
- 11% Latin America & Caribbean
- 23% Asia
- 5% Africa
THE AWARD

- Tribunal renders Award after it has heard the case

- Post award remedies available:
  - Rectification
  - Interpretation
  - Revision
  - Annulment
Conciliation

Bringing the Parties to Agreement
Similarities & Differences Between Arbitration and Conciliation

- **Similarities**
  - The ICSID Convention applies
  - Jurisdictional requirements must be fulfilled
  - Consent cannot be withdrawn

- **Differences**
  - Conciliator makes recommendation to the parties
  - Outcome is non-binding in conciliation
What are the Advantages and Disadvantages of Conciliation?

- **Advantages**
  - Flexible procedure
  - May be time and cost efficient

- **Disadvantage if parties fail to agree**
  - May delay resolution of the dispute