

The role of investor-State tribunals in combating corruption

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Presentation at the Expert Group Meeting
on Corruption and International Investments
convened by UNODC and UNCTAD

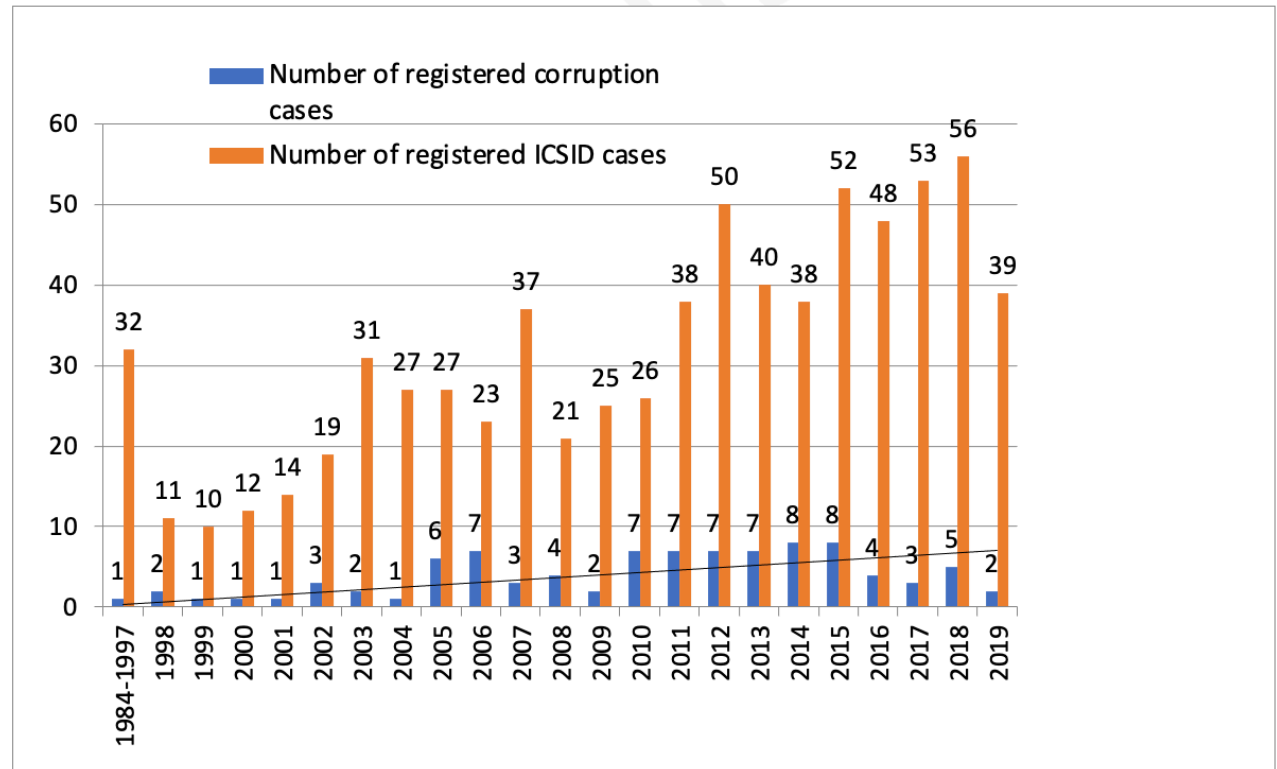
18-19 May 2021

Balancing protection of investments and tackling corruption

Corruption has a devastating economic impact on economies contributing to a loss of tax revenue, institutional inefficiency, loss of public trust in public institutions and poverty

A balance must be struck between the need to provide an effective and efficient investor-State dispute resolution mechanism and the obligation of States, tribunals and investors to tackle corruption.

Trend in corruption-related case registrations and overall ICSID case registrations

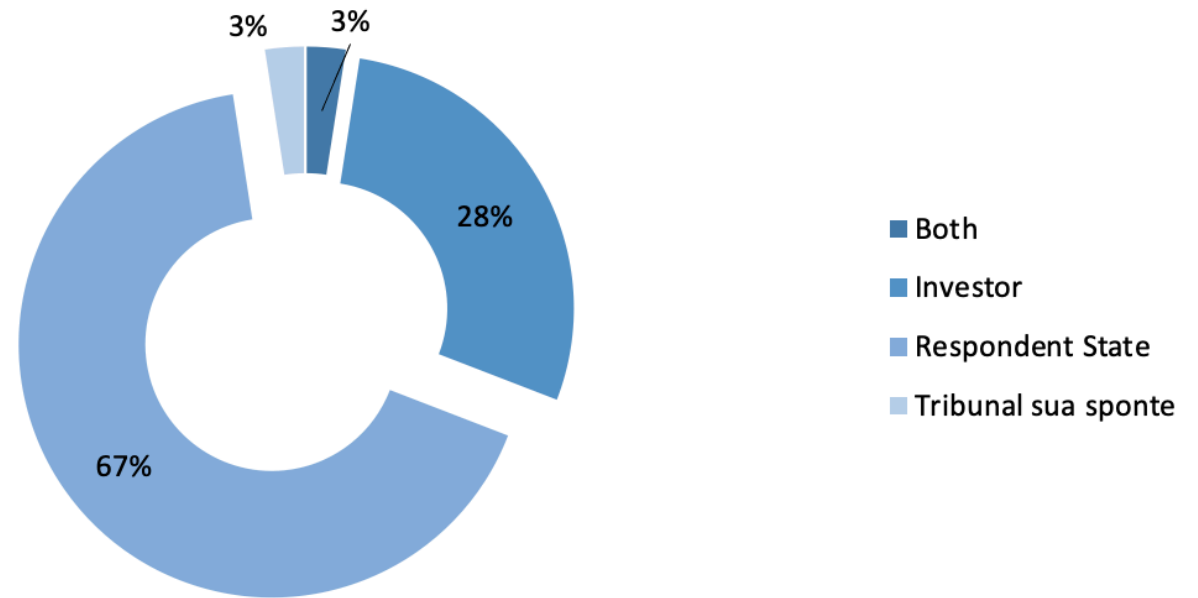


Based on 92 concluded and pending cases by January 2020

Proving corruption

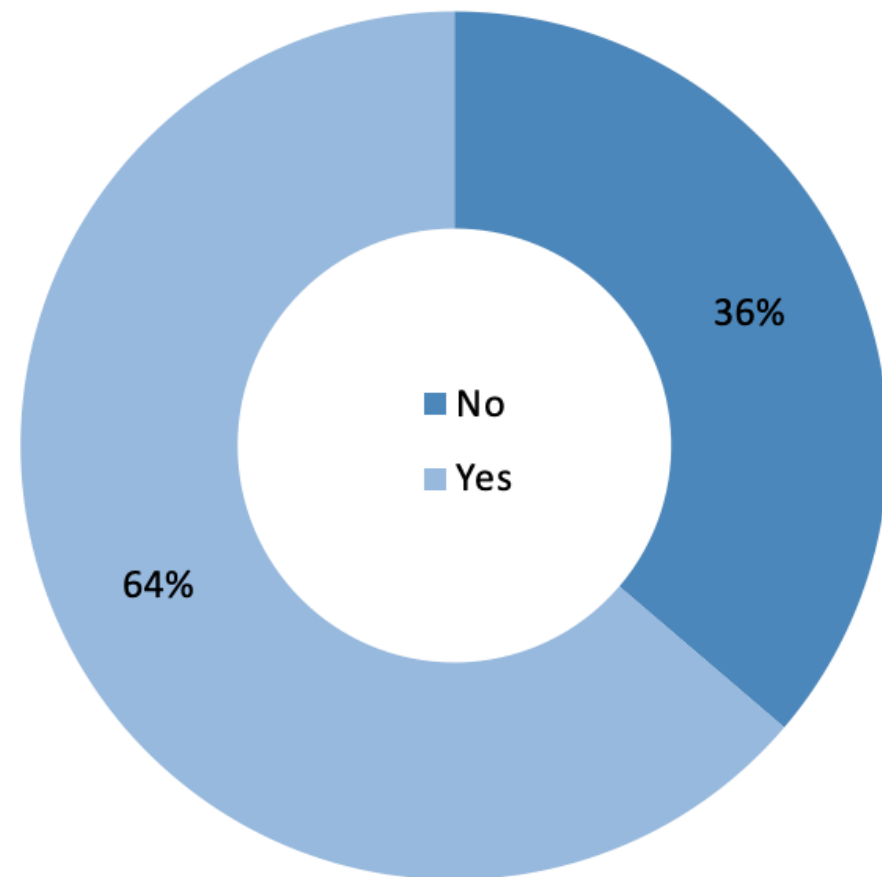
- Corruption allegation requires a high evidentiary standard for substantiation before a tribunal that is frequently ill-equipped to deal with it.
- Its investigation might prove burdensome, outside of the arbitrators' competence and accentuate their lack of coercive powers.

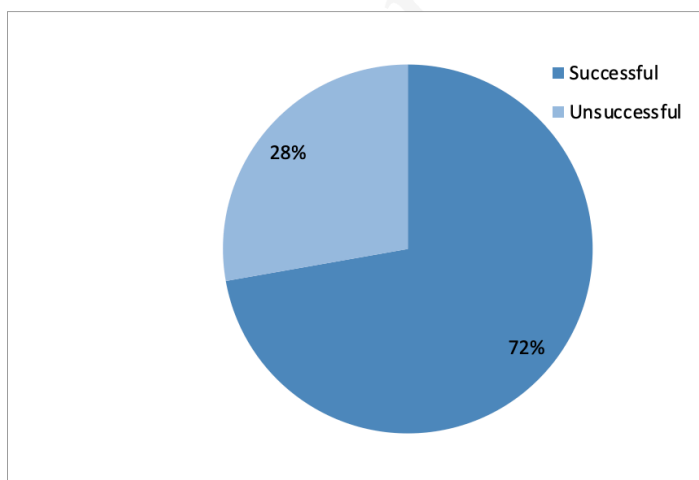
Who makes the allegation of corruption? (81 cases)



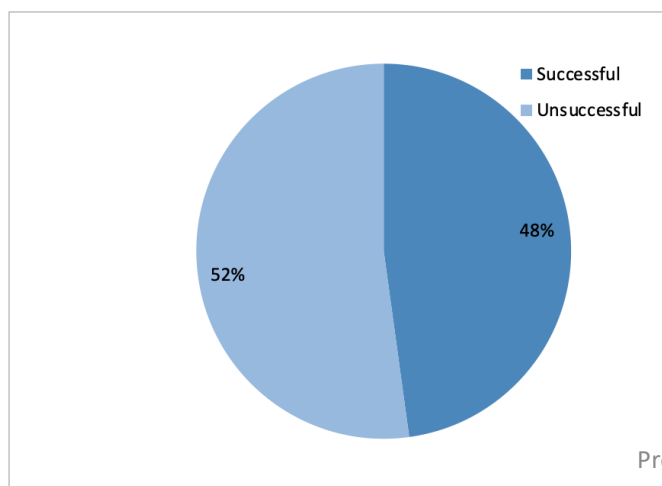
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Did the
tribunals
consider the
corruption
allegations?
(80 cases)





Based on 54 analysed cases with available data.



Based on 23 cases with relevant data.

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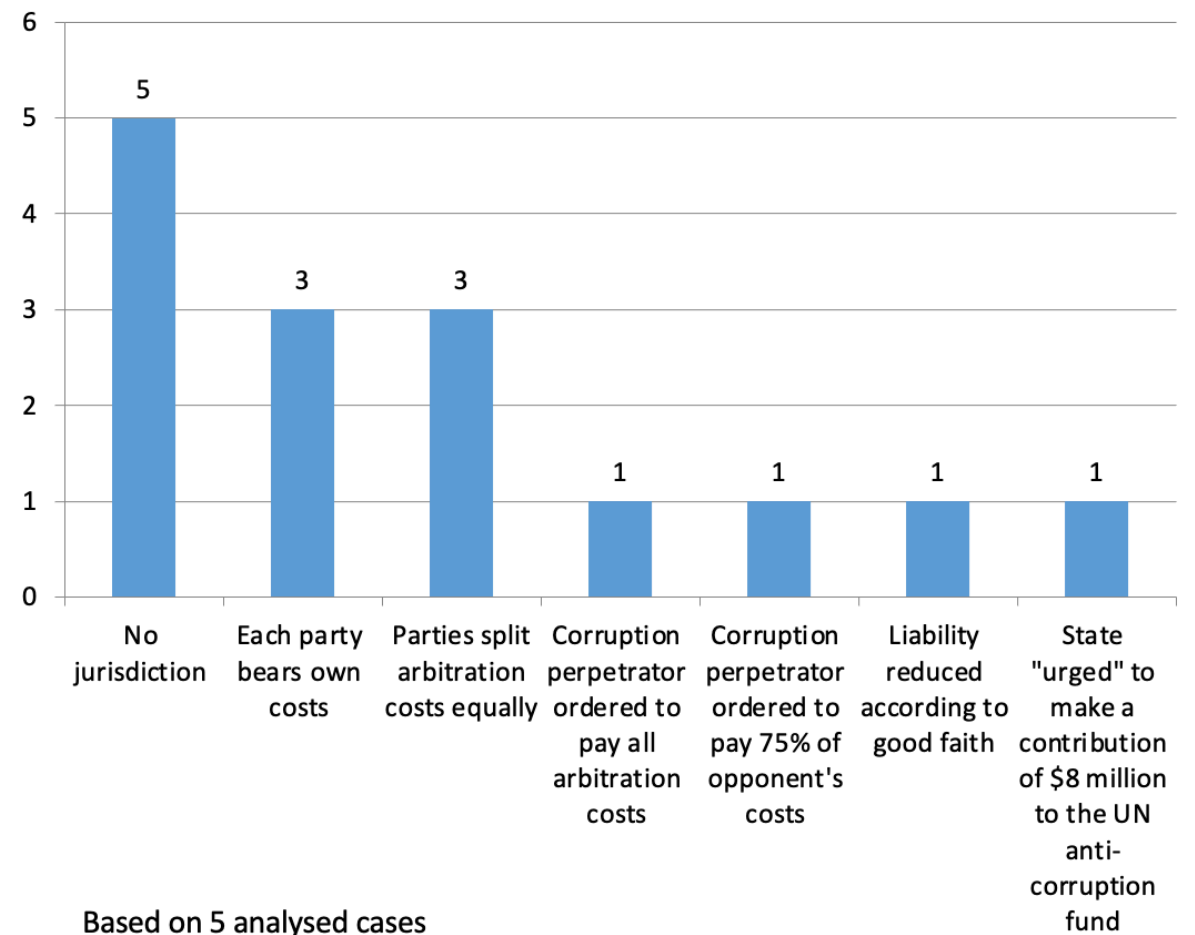
Investors' and Respondent States' success rate in having corruption allegations addressed

Tribunals rarely find corruption

Only in five out of 81 awards, analysed for the purposes of this study, where corruption was alleged, did the tribunals find that corruption was proven.

In these cases, arbitration tribunals declined jurisdiction rather than addressed the merits of the claims.

Consequences of finding corruption



More attention and greater consistency required

- A wider use of a corruption due diligence approach to help investors and States combat corruption and facilitate a greater compliance of foreign direct investment with relevant international law.
- The study will presents guidance on addressing corruption-related offences for adjudicators.

Handling Corruption Allegations in Dispute Settlement

- In international dispute settlement related to foreign investments, the relevant stakeholders should adopt approaches, rules and practices with a view of combating corruption should ensure that neither States nor investors can benefit from corrupt activities
- Tribunals should be under an obligation to reject jurisdiction or admissibility of claims if investment was procured through corruption, and at the same time adopt measures to facilitate corruption due diligence mechanisms to encourage more active measures to combat corruption within States

Handling Corruption Allegations in Dispute Settlement

- Adjudicators are encouraged to take into account, where international law is part of the governing law, international anti-corruption treaties, in particular United Nations Convention against Corruption as a global instrument of *lex specialis* on which there is a high degree of international concurrence
- Where United Nations Convention against Corruption is a part of applicable international law, adjudicators should observe the obligations contained in it, including examining substantiated corruption allegations, promptly reporting alleged corruption offences to relevant authorities in accordance with applicable law

Handling Corruption Allegations in Dispute Settlement

- The relevant stakeholders should ensure that corruption allegations based on credible sources are heard and addressed properly during any dispute-settlement process while paying due attention to red flags and circumstantial evidence of the alleged corruption
- Procedural rule should be established whereby tribunals are obliged to be alert to issues of corruption and report findings made in the course of proceedings to the authorities in accordance with applicable law
- Tribunals should, where appropriate, defer to domestic corruption investigations and await the conclusion of the investigations.