

WORKSHOP

ISDS

Reform
in Latin
America

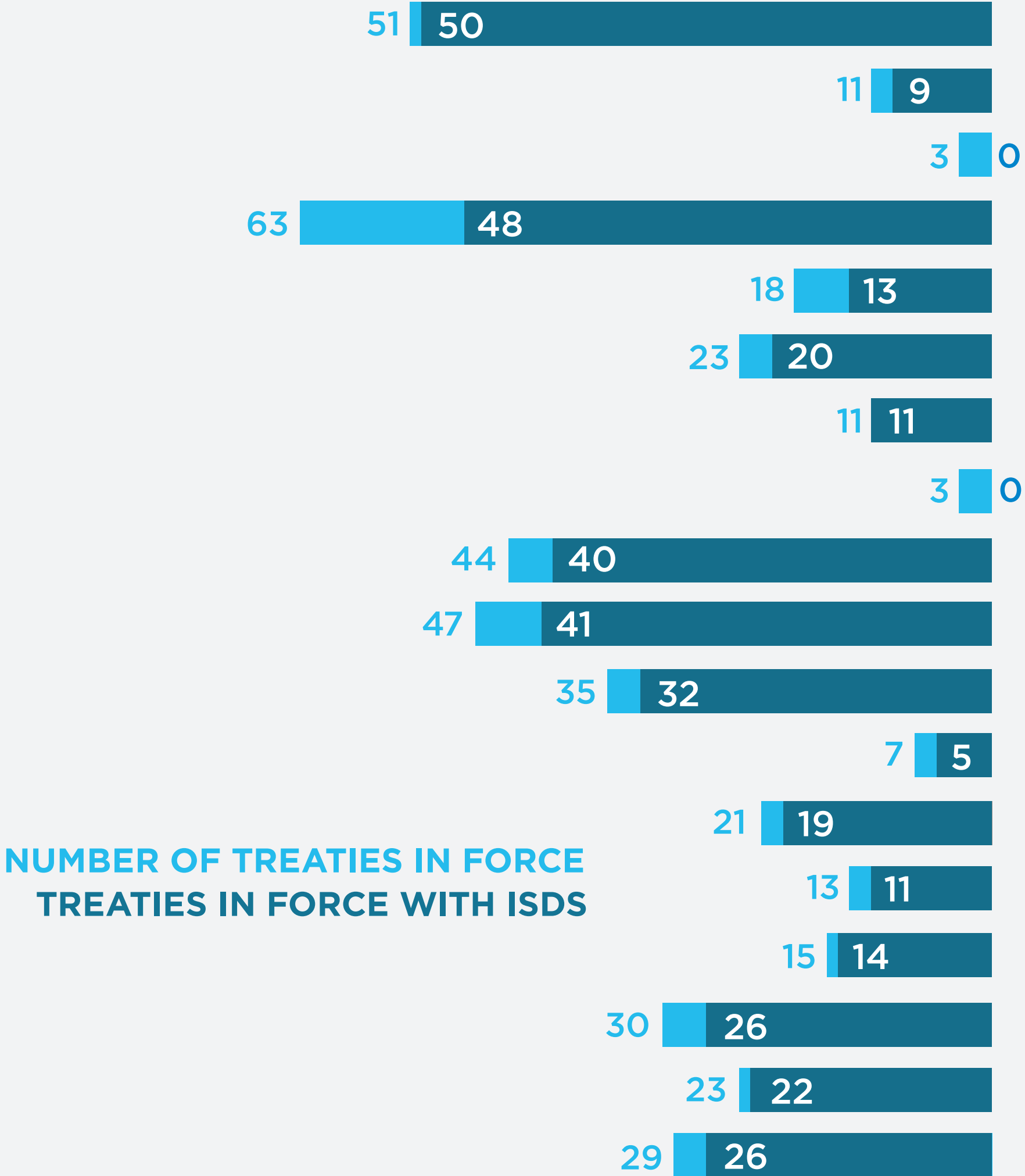
Setting the stage AN OVERVIEW OF ISDS IN THE REGION



Center for the Advancement of
the Rule of Law in the Americas

GEORGETOWN LAW

FACTS ABOUT TREATIES

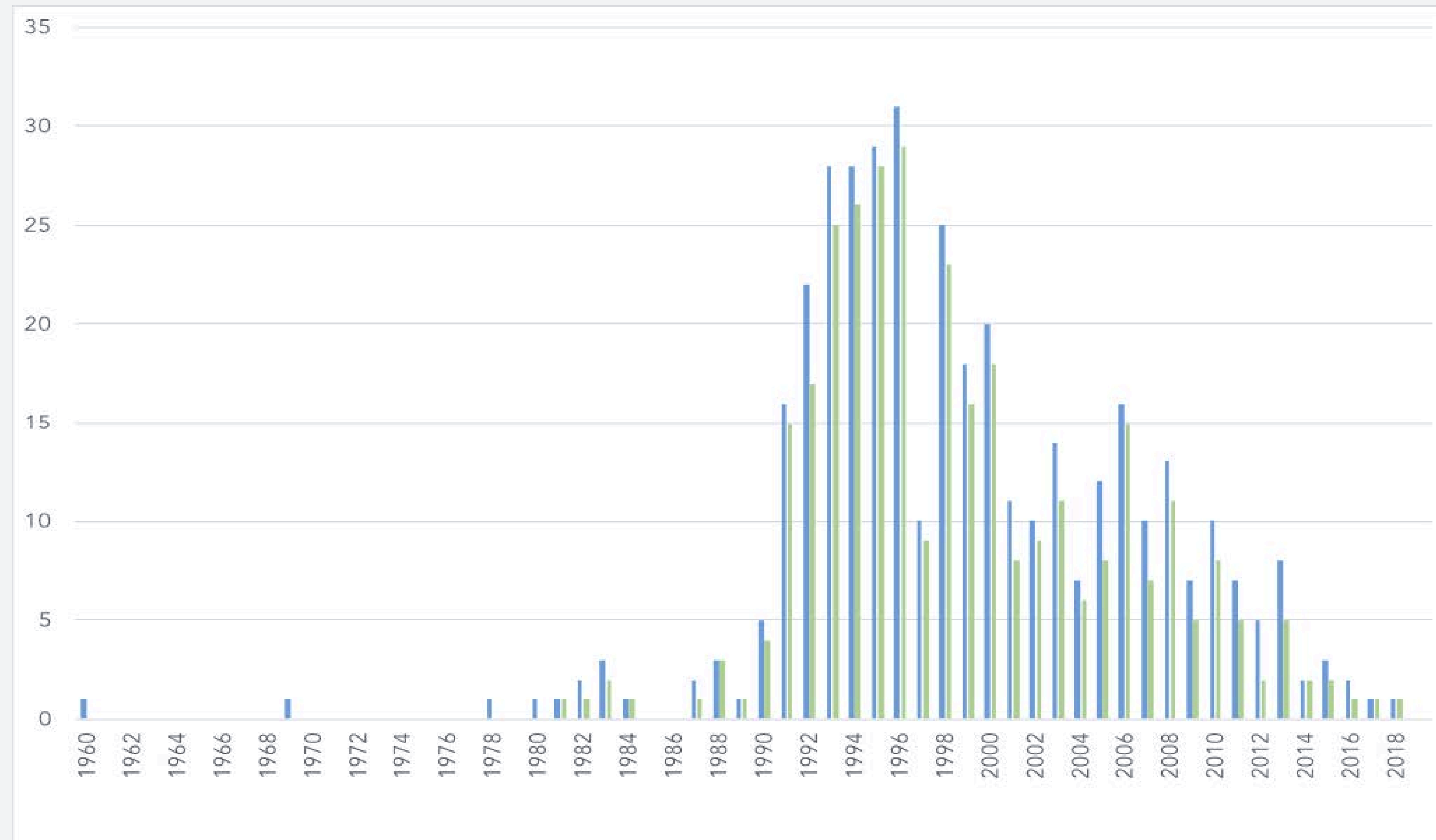


- ARGENTINA
- BOLIVIA
- BRAZIL
- CHILE
- COLOMBIA
- COSTA RICA
- DOMINICAN REPUBLIC
- ECUADOR
- MEXICO
- PERU
- URUGUAY
- EL SALVADOR
- GUATEMALA
- HONDURAS
- NICARAGUA
- PANAMA
- PARAGUAY
- VENEZUELA

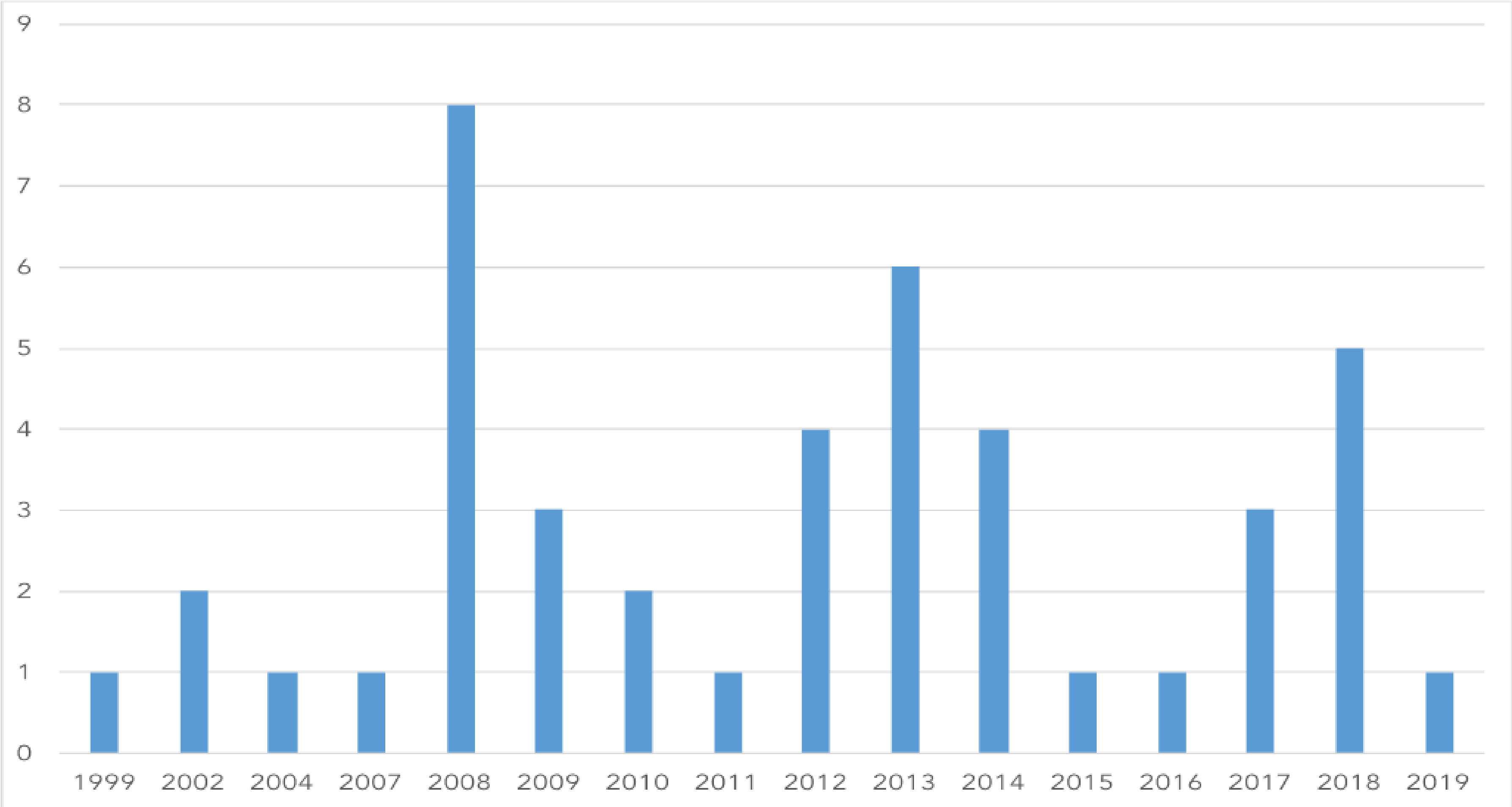


TREATIES IN FORCE WITH ISDS

DATE OF SIGNATURE | TREATIES IN FORCE | TREATIES IN FORCE WITH ISDS



NUMBER OF TREATIES TERMINATED



YEAR TERMINATED

GENERAL FACTS

COUNTRY NUMBER OF INVESTOR-STATE DISPUTES

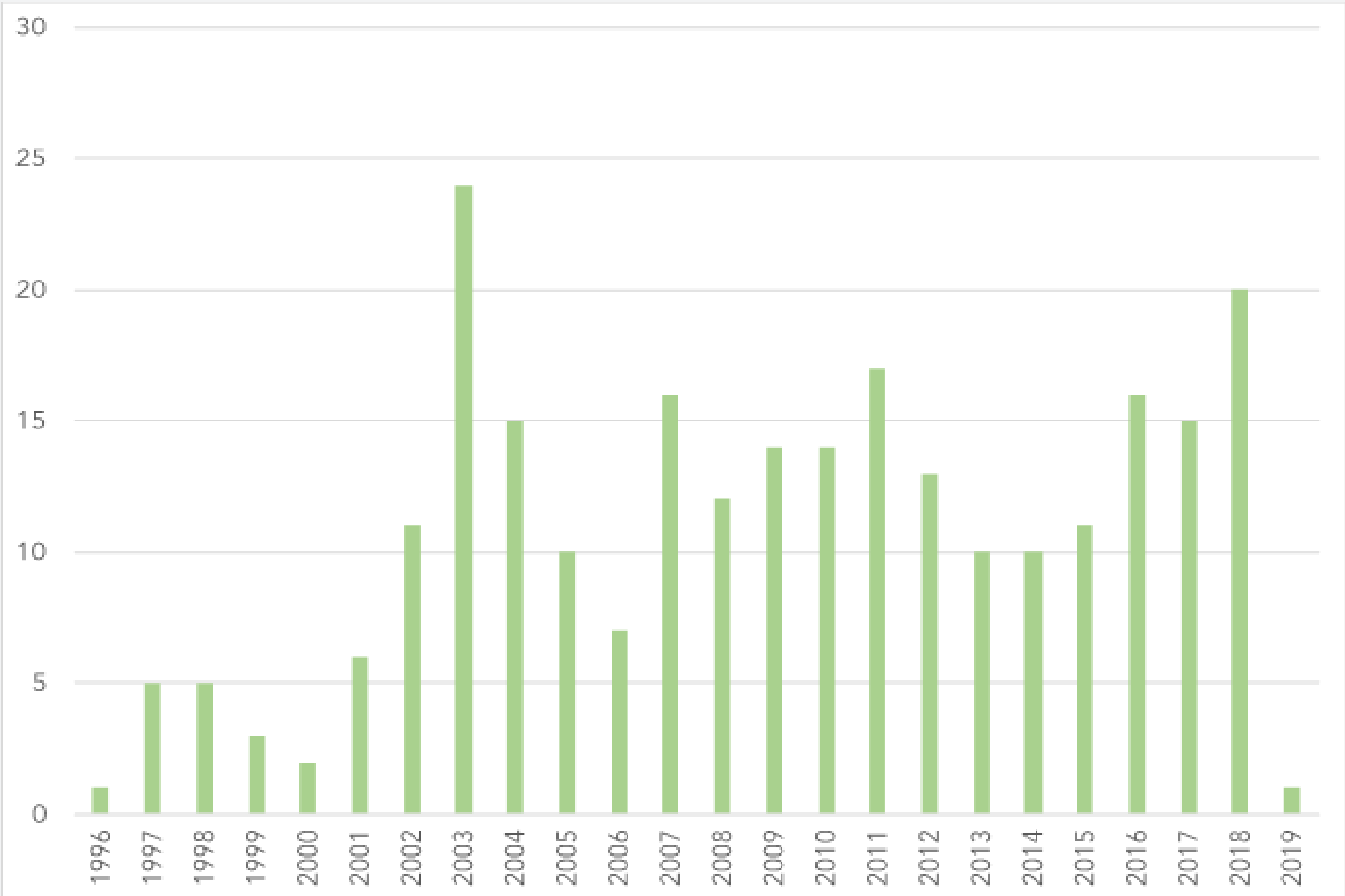


258

Total General

NUMBER OF INVESTOR-STATE DISPUTES

YEAR | NUMBER OF INVESTOR-STATE DISPUTES



258 Total

942

Total number of investor-state disputes in the world:

27.38%

Percentage of cases in Latin America over total cases worldwide:

90.47%

Percentage of Latin American countries subject to claims:

STATUS AND OUTCOMES OF DISPUTES

STATUS OF DISPUTES | TOTAL 258

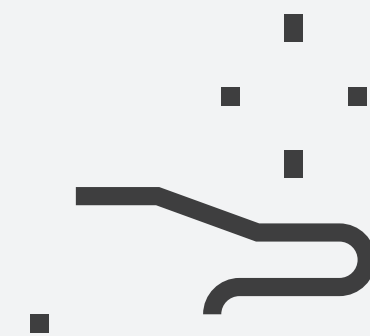
CONCLUDED 104 | **DISCONTINUED 22** | **PENDING 84** | **SETTLED 48**

OUTCOME OF DISPUTES



Decided in favor of the StateA

48 (46.1%)



Decided in favor of the investorA

54 (51.9%)

2

Decided in favor of neither party
(liability found but no damages awarded)

Total claims since 1996 add up to **US\$ 150 Billion**

STATUS AND OUTCOMES OF DISPUTES

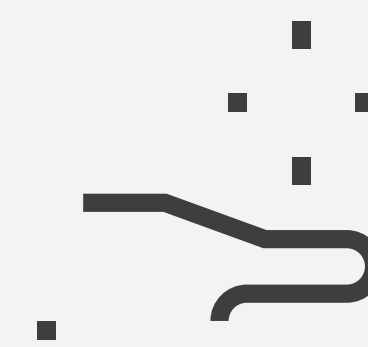
OUTCOME OF DISPUTES

Assuming that a settlement is a result that benefits the investor



48 (31.5%)

DECISIONS THAT FAVOR A STATE



102 (67.1%)

DECISIONS THAT BENEFIT THE INVESTOR (DECISIONS IN FAVOR + SETTLEMENTS)

2

Decisions that favor neither party (liability found but no damages awarded)

The known sum that states have been ordered to pay investors adds up to **US\$ 29.1 billion**. This sum also amounts to more than **5 times** the relief assistance received by Puerto Rico following Hurricane Maria, is almost **3/4** of Bolivia's 2018 national budget (US\$ 41.2 billion), and is more than **1/2** of the IMF bailout pledged to Argentina in 2018 (US\$ 57 billion).

MOST AFFECTED COUNTRIES

COUNTRIES WITH HIGHEST NUMBER OF DISPUTES

Argentina (60)

Venezuela (48)

Mexico (31)

Ecuador (24)

Bolivia (17)

These countries
have received

69.7%

of all disputes in
the region

These countries
have borne

98.3%

of all costs.

MOST AFFECTED COUNTRIES

COUNTRIES WITH HIGHEST NUMBER OF DISPUTES

COUNTRY	NUMBER OF DISPUTES		TOTAL SUM STATES HAVE BEEN ORDERED TO PAY	
	THAT BENEFIT INVESTORS	PERCENTAGE OF DISPUTES THAT BENEFIT INVESTORS	BILLIONS OF US\$	PERCENTAGE OF COSTS OF DISPUTES IN THE REGION
Argentina	35	81.4%	\$ 9.06	31.1%
Bolivia	13	100.0%	\$ 0.80	2.8%
Ecuador	9	64.3%	\$ 1.69	5.8%
Mexico	10	55.6%	\$ 0.24	0.8%
Venezuela	17	73.9%	\$ 16.82	57.8%

TOP 10 MOST COSTLY AWARDS


vs  VENEZUELA
US\$ 8,446,305,166


vs  ECUADOR
US\$ 1,061,775,000


vs  VENEZUELA
US\$ 430,400,000


vs  VENEZUELA
US\$ 1,600,000,000


vs  VENEZUELA
US\$ 967,800,000


vs  ARGENTINA
US\$ 383,600,000


vs  VENEZUELA
US\$ 1,202,000,000

 GOLD RESERVE
vs  VENEZUELA
US\$ 713,000,000


vs  ECUADOR
US\$ 379,800,000


TOP 10 SETTLEMENTS



REPSOL

vs  ARGENTINA
US\$ 5,000,000,000



vs  VENEZUELA
US\$ 600,000,000

ABACLAT

vs  ARGENTINA
US\$ 1,350,000,000



**UNIVERSAL
COMPRESSION**

vs  VENEZUELA
US\$ 442,000,000


Dunkeld

vs  BELIZE
US\$ 96,900,000



vs  VENEZUELA
US\$ 700,000,000




vs  BOLIVIA
US\$ 357,000,000




vs  ECUADOR
US\$ 96,900,000



Holcim

vs  VENEZUELA
US\$ 650,000,000

AEI

vs  BOLIVIA
US\$ 357,000,000

NATIONALITY OF INVESTORS AND INDUSTRIES

NATIONALITY OF INVESTORS (TOP 10)



83

US



43

SPAIN



24

NETHERLANDS



21

CANADA



19

UK



16

FRANCE



7

CHILE



7

BARBADOS



7

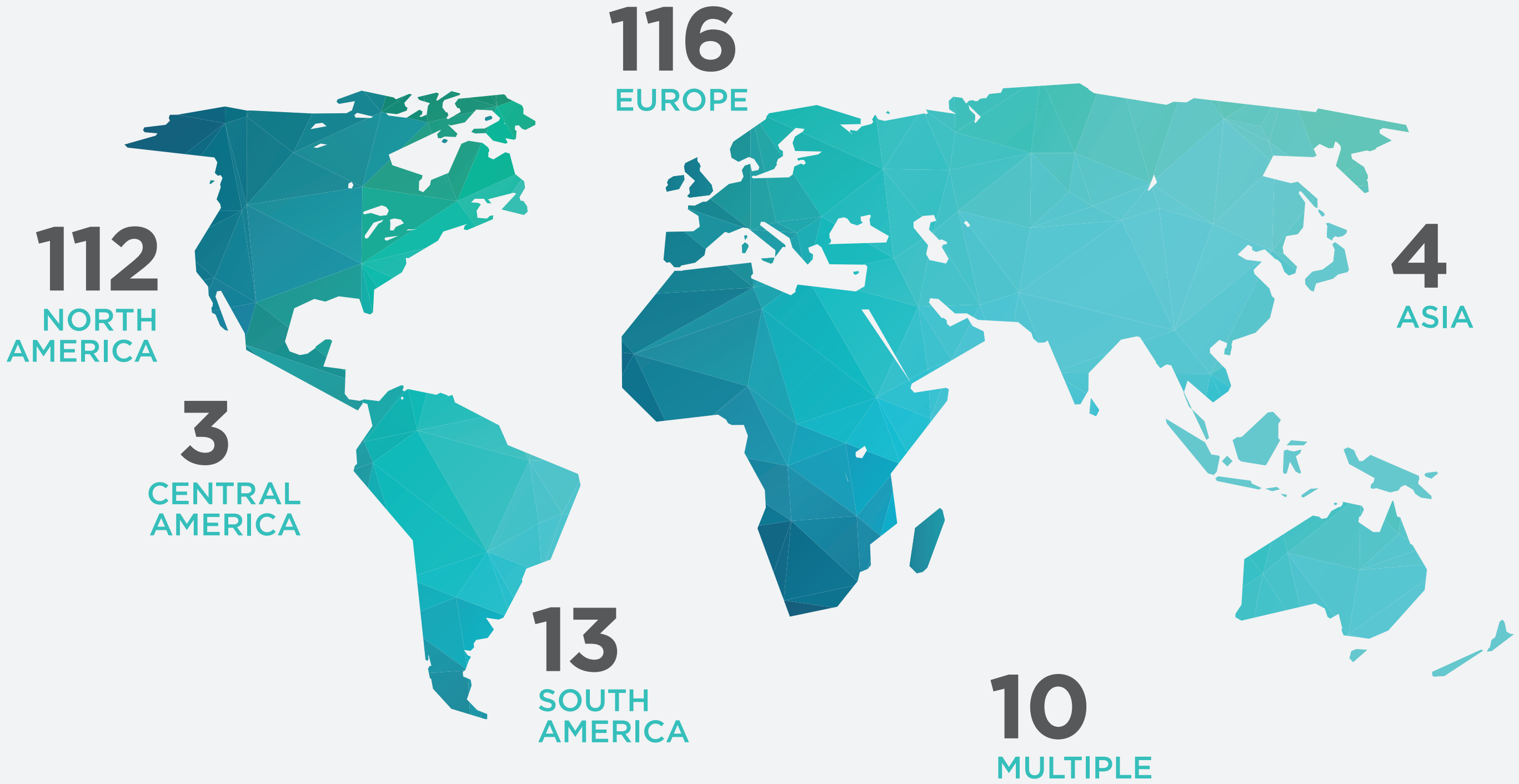
GERMANY



7

SUITZERLAND

NATIONALITY OF INVESTORS AND INDUSTRIES



in **88.3%**

of the disputes brought against Latin American countries, the investors were either European or North American.

US and Spain investors have brought 49.2% of all cases against Latin American countries. **23.7% of US investors have filed claims relating to mining and quarrying activities** and 17.5% have raised disputes concerning electricity, gas, steam and air conditioning supply. **13.9% of Spanish investors have filed claims concerning electricity, gas, steam and air conditioning supply** and the same number have filed claims for activities in the construction sector.

NATIONALITY OF INVESTORS AND INDUSTRIES

INDUSTRY / NO. OF DISPUTES

54 MINING AND QUARRYING	18 WATER SUPPLY; SEWERAGE, WASTE MANAGEMENT	10 OIL AND GAS	3 ARTS, ENTERTAINMENT AND RECREATION	2 ACCOMMODATION AND FOOD SERVICE
38 ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	17 CONSTRUCTION	9 PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	3 RENTAL AND LEASING ACTIVITIES	1 PUBLIC ADMINISTRATION AND DEFENCE
32 MANUFACTURING	16 TELECOMMUNICATIONS	7 AGRICULTURE, FORESTRY AND FISHING	3 WHOLESALE AND RETAIL TRADE	1 INFORMATION SERVICE
24 FINANCIAL AND INSURANCE ACTIVITIES	12 REAL ESTATE ACTIVITIES	6 TRANSPORTATION AND STORAGE	2 PUBLISHING ACTIVITIES	

NATIONALITY OF INVESTORS AND INDUSTRIES








COUNTRY	% OF DISPUTESA	INDUSTRY
ARGENTINA	28%	Electricity, gas, steam and air conditioning supply
BELIZE	100%	Telecommunications
BOLIVIA	35%	Mining and quarrying
CHILE	40%	Publishing activities
COLOMBIA	55%	Mining and quarrying
COSTA RICA	44%	Real estate activities
DOMINICAN REPUBLIC	33% eaA	Real estate activities / Electricity, gas, steam and air conditioning supply
ECUADOR	50%	Mining and quarrying
EL SALVADOR	67%	Mining and quarrying
GUATEMALA	66%	Electricity, gas, steam and air conditioning supply
GUYANA	100%	Financial and insurance activities
HONDURAS	50%	Financial and insurance activities
MEXICO	19%	Water supply; sewerage, waste management and remediation activities
NICARAGUA	50% eaA	Mining and quarrying / Manufacturing
PANAMA	25% eaA	Electricity, gas, steam and air conditioning supply / Manufacturing
PARAGUAY	67%	Professional, scientific and technical activities
PERU	33%	Construction
URUGUAY	-	Multiple industries
VENEZUELA	39%	Manufacturing

ARBITRATORS, LAW FIRMS AND ARBITRATION CENTERS:

NAME	APPOINTED BY STATE	APPOINTED BY INVESTOR	APPOINTED BY PRESIDENT	TOTAL
BRIGITTE STERN (FRANCE)	23	-	3	26
GABRIELLE KAUFMANN-KOHLER (SWITZERLAND)	-	9	12	21
RODRIGO OREAMUNO BLANCO (COSTA RICA)	10	-	9	19
HORACIO A. GRIGERA NAÓN (ARGENTINA)	1	16	1	18
FRANCISCO ORREGO VICUÑA (CHILE)	1	8	7	16
JUAN FERNÁNDEZ-ARMESTO (SPAIN)	2	1	13	16
CHARLES BROWER (USA)	-	14	-	14
BERNARDO CREMADES (SPAIN)	5	2	6	13
RAÚL EMILIO VINUESA (SPAIN)	13	-	-	13
ALBERT JAN VAN DEN BERG (NETHERLANDS)	2	4	6	12
YVES DERAIS (FRANCE)	7	1	4	12
CLAUS VON WOBESER (MEXICO)	6	2	4	12
EDUARDO ZULETA (COLOMBIA)	-	3	7	10

TOP 10 FIRMS HIRED BY THE STATE

NO. OF DISPUTES

	38		9
	19		8
	14		7
	13		6
	9		6

TOP 10 FIRMS HIRED BY THE INVESTOR

NO. OF DISPUTES



41

COVINGTON

7

KING & SPALDING

30

SIDLEY

6

**WHITE
& CASE**

10

Debevoise
& Plimpton

5

**Baker
McKenzie.**

8

**JONES
DAY**

5

 **BOMCHIL**

7

PÉREZ
BUSTAMANTE
& PONCE **PBP**

5

ARBITRATION CENTER

ARBITRATION CENTER	NO. OF DISPUTES	%
ICSID	199	77%
PCA	30	12%
DATA NOT AVAILABLE	7	3%
-	7	3%
NO ADMINISTERING INSTITUTION	6	2%
AD HOC ARBITRATION	4	1%
LCIA	3	1%
ICC	1	0,3%
SCC	1	0,3%

CLAIMS

OBLIGATION	NO. OF CLAIMS
FET	163
IND. EXPROPRIATION	138
FPS	81
ARBITRARY AND DISCRIMINATORY MEASURES	66
UMBRELLA CLAUSE	52
DIR. EXPROPRIATION	52
NATIONAL TREATMENT	47
MFN	38
TRANSFER OF FUNDS	11
PERFORMANCE REQUIREMENTS	4

CLAIMS

COUNTRY	FET	DIRECT EXPROPRIATION	INDIRECT EXPROPRIATION	UMBRELLA CLAUSE	FPS	NUMBER OF INVESTOR-STATE DISPUTES
ARGENTINA	39	8	39	24	26	60
BELIZE	2	1	2	-	2	3
BOLIVIA	6	7	3	2	4	17
CHILE	5	1	4	-	2	5
COLOMBIA	10	4	6	-	-	11
COSTA RICA	9	1	8	4	5	9
ECUADOR	14	4	12	6	6	24
EL SALVADOR	2	-	3	-	-	3
GUATEMALA	3	-	2	1	1	6
GUYANA	-	-	-	-	-	1
HONDURAS	-	1	-	-	-	2
MEXICO	27	2	27	1	11	31
NICARAGUA	1	-	1	-	-	2
PANAMA	6	-	6	-	3	8
PARAGUAY	3	-	2	2	-	3
PERU	7	2	6	1	3	15
URUGUAY	3	-	2	1	1	4
VENEZUELA	24	21	13	10	15	48
DOMINICAN REPUBLIC	2	-	2	-	2	6
TOTAL	163	52	138	52	81	258