On the Significance of the Investment Chapter of the Energy Charter Treaty

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Why shall we discuss the Investment Chapter ?

- The Investment Part: One of Three Pillars of the ECT
- Effectiveness of the Investment Clauses
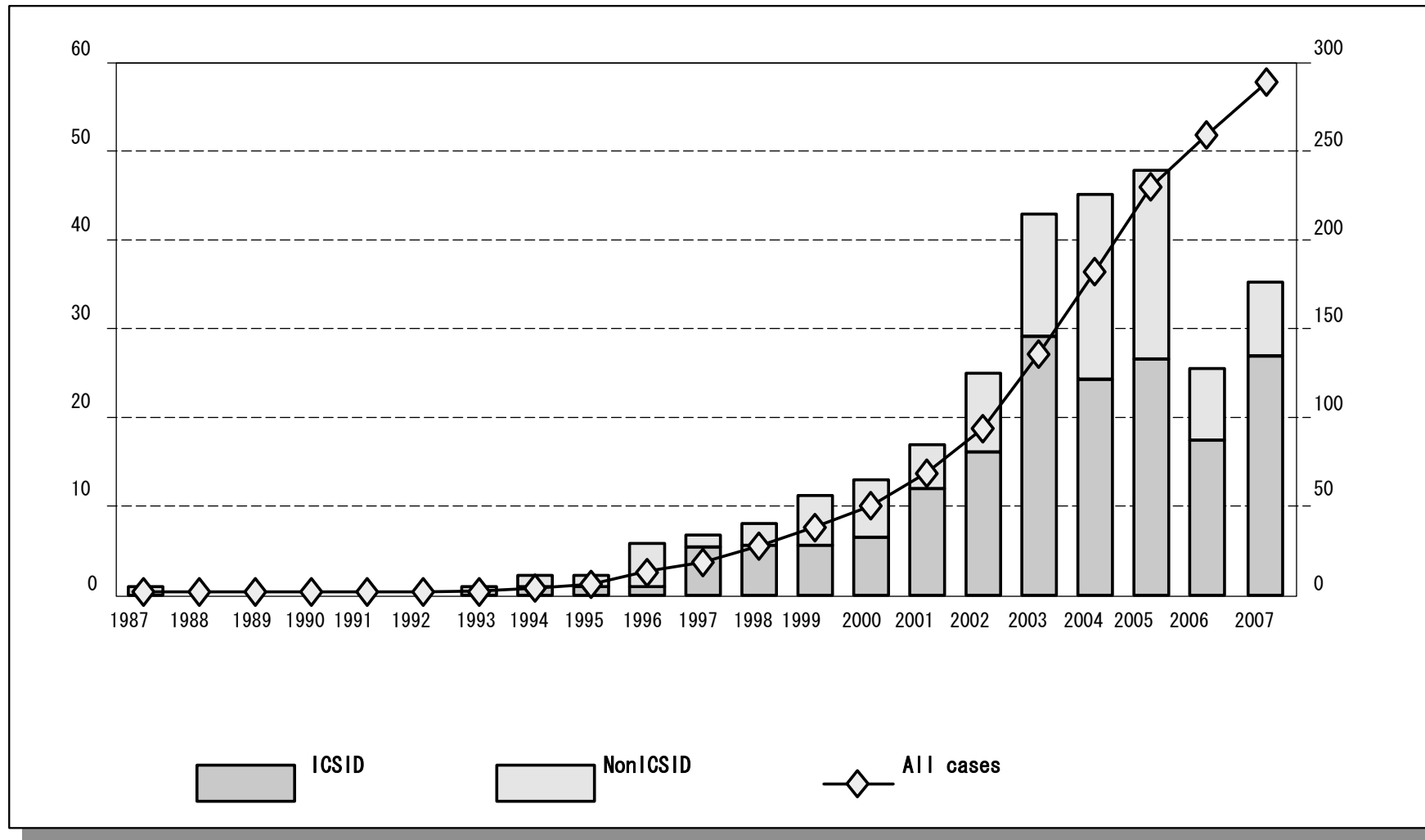
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Investor *vs.* Host State Arbitration

What is the IIA ?

- Three Elements of Investment Chapter
  (1) **Investment Protection** （投資保護） e.g. Appropriate
      Compensation against Expropriation
  (2) **Treatment of Local Subsidies and Branches of Investors**
      （待遇） e.g. National Treatment of post investment phase
  (3) **Liberalization**（自由化）
  (4) **Dispute Settlement**: State vs. State, Investor vs. State
      <u>Awards (Decisions) are Binding.</u>

- The ECT contains three Elements and (1) and (2) are important for Investors
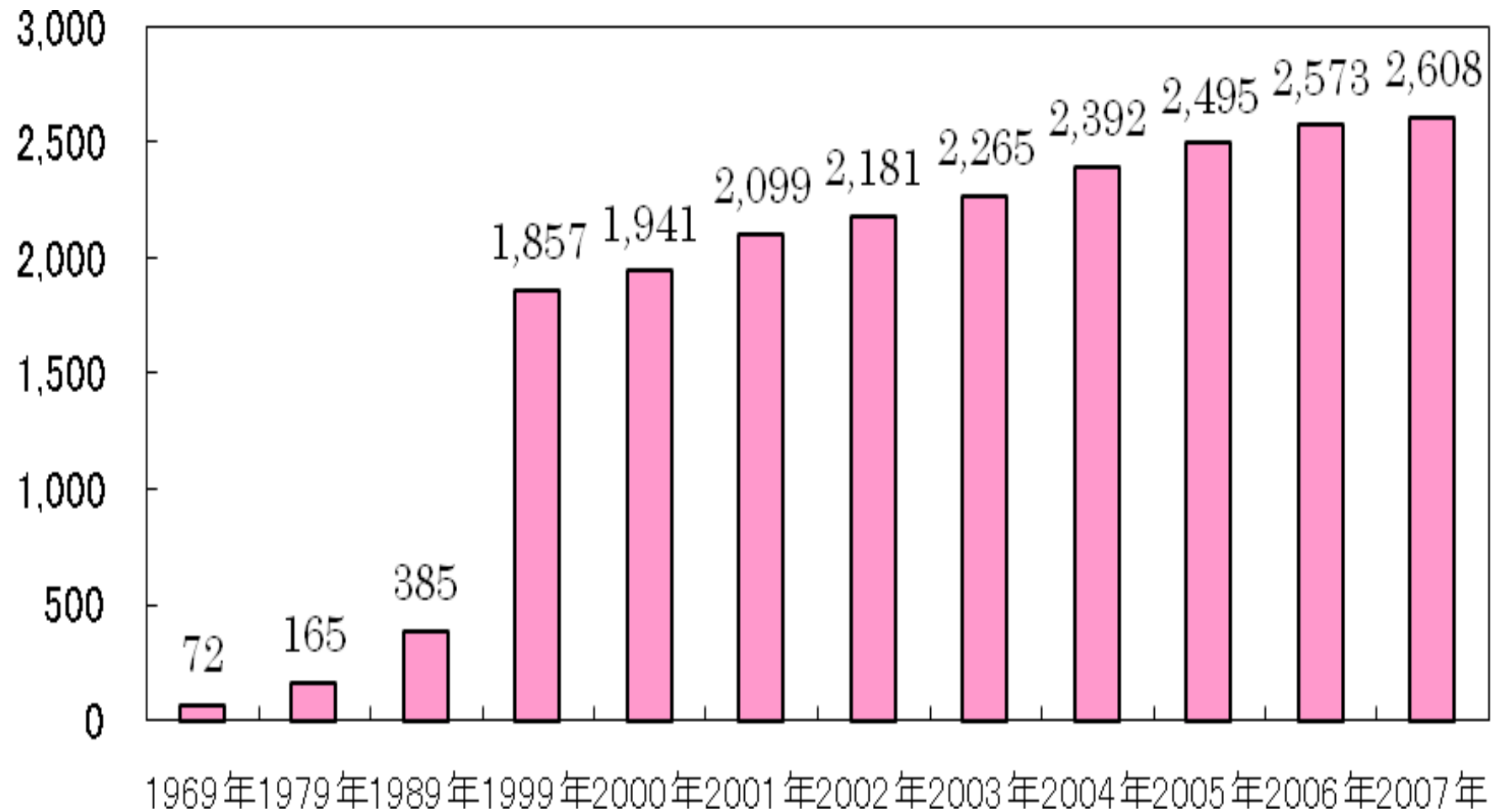
Effects of Arbitration Awards

- Awards (Decisions) are Binding under International Law, and **Enforceable under Domestic Laws** just as Awards of International Commercial Arbitrations.

- The Proportion of Voluntary Compliance is very high.

- One Condition for Loans by the World Bank is Compliance of IIAs' Awards.

The Number of Arbitration Cases

Increase of Number of IIAs

Nature of the ECT's Investment Chapter

- Only One of Universal Multilateral IIAs (47 members and One International Org.) Other IIAs are Bilateral or Regional.

- Japan is Party to 21 IIAs (only signed 2 IIAs). → ECT is Very Valuable for Japan.

- The Investment Chapter of the ECT only Covers Energy Field.

- **How shall we Assess such Coverage**?

When can the IIAs Exercise their Power?

- In General: The Moment when the Host State does not Comply with the Obligations arising from IIA

  (Very complicated interpretations are required.)
- Towards Developed States: Few Problems
- Towards Developing States**:(1)As an "Exit" of Investment (2)Large Amount of Investment-** Very Effective as an exit of Energy sectors as well as Infrastructure sectors

- <u>**The ECT is More Important to Investors than might be considered at first Sight.**</u>

Cases concerning ETC's Investment Chapter

1. AES Summit Generation Ltd. (UK subsidiary of US-based AES Corporation) v. Hungary
2. Nykomb Synergetics Technology Holding AB (Sweden) v. Latvia
3. Plama Consortium Ltd. (Cyprus) v. Bulgaria
4. Petrobart Ltd. (Gibraltar) v. Kyrgyzstan
5. Alstom Power Italia SpA, Alstom SpA (Italy) v. Mongolia
6. Yukos Universal Ltd. (UK – Isle of Man) v. Russian Federation
7. Hulley Enterprises Ltd. (Cyprus) v. Russian Federation
8. Veteran Petroleum Trust (Cyprus) v. Russian Federation
9. Ioannis Kardassopoulos (Greece) v. Georgia
10. Amto (Latvia) v. Ukraine
11. Hrvatska Elektropriveda d.d. (HEP) (Croatia) v. Republic of Slovenia
12. Libananco Holdings Co. Limited (Cyprus) v. Republic of Turkey
13. Azpetrol International Holdings B.V., Azpetrol Group B.V. and Azpetrol Oil Services Group B.V. (the Netherlands) v. Azerbaijan
14. Cementownia "Nowa Huta" S.A. (Poland) v. Republic of Turkey
15. Europe Cement Investment and Trade S.A. (Poland) v. Republic of Turkey
16. Liman Caspian Oil B.V. (the Netherlands) and NCL Dutch Investment B.V. (the Netherlands) v. Republic of Kazakhstan
17. Electrabel S.A. v. Republic of Hungary
18. AES Summit Generation Limited and AES-Tisza Erőmű Kft. v. Republic of Hungary
19. Mercuria Energy Group Ltd. v. Republic of Poland
20. Alapli Elektrik B.V. v. Republic of Turkey

Conclusion

- The Investment Chapter of the ECT should be an **Important Moment** Before and After the Investment in the Energy Sector.

- **Before** Investment: Risk Hedge Function (No Premium)

- **After** Investment: Dispute Resolution Mechanism, including in the Negotiation Phase

Supplement: on Host State Side

- To Produce (1) **Incentive** to Invite Foreign Investments by Improving Investment Climate

  (**2**)**Good Governance** of Host States

  E.g. Increase of Transparency