

Bringing Claims and Enforcing International Arbitration Awards Against Sub-Saharan African States and Parties

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Abstract

This article examines the difficulties inherent to enforcing ICC awards and other commercial awards against sub-Saharan African States or parties, as well as the difficulties of bringing claims and enforcing ICSID (or other treaty-based awards) against sub-Saharan African States in the context of investor/State disputes. It concludes by summarizing potential means for sub-Saharan African States to improve their international arbitration regimes and the enforcement of international arbitral awards in the region.

Keywords

sub-Saharan Africa; Africa; commercial arbitration; treaty arbitration; arbitration; ICC; ICSID; enforcement of arbitral awards; enforcement; execution of arbitral awards; OHADA; New York Convention; Bilateral Investment Treaties; sovereign immunity

Introduction

For many practitioners and arbitrators from Occidental Countries, arbitration in sub-Saharan Africa is largely unfamiliar territory. Nevertheless, arbitration does occur in sub-Saharan Africa, albeit currently at a lower rate than in other regions of the world.

Among the primary advantages of international arbitration are its finality and the relative ease of enforcement of arbitral awards throughout the world. The facility to enforce awards stems largely from the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “New York Convention”), which currently boasts 143 State

parties, allowing for the enforcement of arbitral awards in roughly 2/3 of the States in the world.¹

While the enforcement of arbitral awards is certainly not automatic – a party must go before a State court that has enacted the New York Convention to seek enforcement, which is invariably more difficult in certain States – there are very few grounds on which an arbitral award may be set aside by the courts of State parties to the New York Convention.²

Yet, while the New York Convention is in the process of gaining universality, only approximately half of the roughly 45³ sub-Saharan African States have enacted the New York Convention, posing evident difficulties in the enforcement of arbitral awards in many States in the region.

This is a real concern given the expected growth of the economies of sub-Saharan Africa over the near future. While sub-Saharan Africa has traditionally played a small role in the global economy, despite the current financial crisis the IMF forecasts that the economies of sub-Saharan Africa will expand by 5.9% in 2008 and 6.2% in 2009, after economic growth of 6.7% in 2007, figures which are far more robust than the 3% economic growth predicted worldwide over this period.⁴ Given sub-Saharan Africa's forecasted growth, and given the fact that international arbitration has become the normal way of settling disputes for international commercial contracts, there are good reasons to believe that international commercial and investor/State arbitrations will play a greater role in sub-Saharan Africa in the near future.

In light of the real potential of the greater importance of international arbitration in sub-Saharan Africa over the upcoming years, this article sets forth potential difficulties in bringing claims and enforcing arbitral awards against sub-Saharan African parties and States.

This article first examines (I) the difficulties inherent to enforcing ICC awards and other commercial awards against sub-Saharan States or parties,

¹) United Nations Commission on International Trade Law Website, "Status," available at: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html.

²) See *infra* at page 147 for a list of the grounds for setting aside an award under the New York Convention. State immunity from the enforcement of awards is also discussed *infra* at pp. 156–158.

³) Note that sources vary as to the precise number of sub-Saharan African States. For the purposes of this article, Mauritius, The Seychelles, and Sao Tome and Principe are not analyzed as sub-Saharan African States.

⁴) Africa's economy: Trying to weather the storm, *The Economist*, October 30, 2008, available at: http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=1269867&story_id=12516656.

which is followed by an overview of (II) the difficulties of bringing claims and attempting to enforce ICSID (or treaty-based awards based on the UNCITRAL arbitration rules) against sub-Saharan African States in the context of investor/State disputes. It then concludes by summarizing potential means for sub-Saharan African States to improve their international arbitration regimes and the enforcement of arbitral awards in the region.

I. The Enforcement of ICC Awards and Other Commercial Awards in Sub-Saharan Africa

The majority of international arbitrations are ICC arbitrations, although other commercial disputes may arise in *ad hoc* proceedings and before other arbitral institutions. This is because the ICC is currently the most prominent arbitral institution with regard to commercial arbitrations, with far more cases than any other arbitral institution. Hence, this article will focus primarily on ICC arbitrations.

While it is indisputable that arbitration in sub-Saharan Africa has been historically less important than in other regions of the world, it certainly does exist. Parties from sub-Saharan Africa were engaged in a range of 30 to 68 ICC arbitrations per year between 1998 and 2007.⁵ This compares to the higher range of 486 to 801 ICC cases in North and Western Europe over the same time period.⁶ Yet, while parties from sub-Saharan Africa involved in all cases submitted to the ICC in 2007 represented a mere 2.4% of the total cases submitted,⁷ expected future growth in Africa as compared to the global economy as a whole will likely change this trend, leading to additional ICC and other commercial arbitrations in sub-Saharan Africa.

As set forth below, perhaps the greatest problem for the enforcement of ICC awards (as well as other international arbitration awards such as those rendered under the Swiss Rules, by the London Court of International Arbitration, by the Arbitration Institute of the Stockholm Chamber of

⁵ Parties from sub-Saharan Africa were engaged in 30 ICC cases in 1998, 33 in 1999, 68 in 2000, 52 in 2001, 52 in 2002, 55 in 2003, 53 in 2004, 40 in 2005, 56 in 2006, and 31 cases in 2007. See Pierre Tercier, ICC Rules of Arbitration: A Decade of Use, 19(1) *Bulletin de la Cour internationale d'arbitrage de la CCI*, (2008) 35, 55.

⁶ *Ibid.*, 35, 58.

⁷ 19(1) *The ICC International Court of Arbitration Bulletin*, (2008) 4, 7 (May 2008).

Commerce, and *ad hoc* awards (mainly rendered under the UNCITRAL Rules)) in sub-Saharan Africa is (A) the lack of ratification of the New York Convention by many sub-Saharan African countries. This problem is compounded by (B) the status of the New York Convention in sub-Saharan African countries, even once it has been enacted. A further difficulty is (C) the current state of sub-Saharan African laws relating to international arbitration, regardless of whether the New York Convention has been ratified. The above factors may explain why (D) various commercial awards against sub-Saharan African parties do not appear to be enforced or paid in full or at all.

A. Enforcement of Awards in Sub-Saharan Africa via the New York Convention

One of the most serious problems encountered in enforcing commercial international arbitral awards against sub-Saharan African countries is the fact that only approximately half of these countries are parties to the New York Convention.

Enforcement of an arbitral award consists of measures aimed generally at obtaining compulsory payment, which presupposes assets upon which the enforcement order may operate, whether real or personal, including investment securities or debts. These assets may exist in different places around the world, including in sub-Saharan African countries themselves, making the ratification of the New York Convention important to the successful enforcement and execution of arbitral awards in sub-Saharan African States.

As of December 12, 2008, however, only 26 sub-Saharan African countries had ratified the New York Convention. These countries are Botswana, Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Djibouti, Gabon, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Mali, Mauritania, Mozambique, Niger, Nigeria, Senegal, South Africa, United Republic of Tanzania, Uganda, Rwanda, Zambia, and Zimbabwe.⁸

Conversely, those sub-Saharan African countries which are not parties to the New York Convention are Angola, Burundi, Chad, Comoros, Congo-Brazzaville, Democratic Republic of the Congo, Equatorial Guinea,

⁸) See Status: 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Uncitral Website, *available at*: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html.

Eritrea, Ethiopia, Gambia, Guinea-Bissau, Malawi, Namibia, Sierra Leone, Somalia, Sudan, Swaziland, and Togo.

Hence, a party having prevailed in an international arbitration rendered against these latter States cannot rely on the New York Convention to enforce awards in said States. Thus, the winning party to the arbitration attempting to enforce an award in these latter sub-Saharan African States will be forced to rely upon the country's domestic legislation regarding international arbitration, assuming that such legislation exists. The winning party would thus be forced to go through the local court system, which could contain requirements and case-law that are unfavorable to the prevailing party. This, of course, poses a major problem if the award debtor's assets can only reasonably be located in a sub-Saharan African State that has not enacted the New York Convention.

B. Additional Problems Regarding Sub-Saharan African States that have Ratified the New York Convention and the Enforcement of Awards

Even ratification of the New York Convention, however, is not a panacea for the enforcement of arbitral awards in sub-Saharan Africa.

Under the New York Convention, a losing party resisting enforcement or seeking the annulment of an international arbitration may assert various defenses against a demand for the enforcement of an award. According to Article V of the New York Convention, such defenses may be based on the inexistence of an arbitration agreement, or an irregularity in the composition of the arbitration panel, breach of adversarial principles, the non-arbitrability of a dispute, the arbitrators exceeding the scope of their authority, or a claim that an award is in breach of public policy of the country where recognition and enforcement is sought.⁹ However, in some sub-Saharan African countries – including those that have ratified the New York Convention – additional defenses to the enforcement of an arbitral award apply.

Most notably, among certain sub-Saharan African States that are parties to the New York Convention, the Convention may not have been implemented according to requirements of domestic law and hence will simply be disregarded by domestic courts.

⁹ See the New York Convention, Article V.

As noted by Amazu A. Asouzu: “[A]mongst some of these Contracting States, the Convention may not have been implemented legislatively where that is necessary.”¹⁰

This is especially true for sub-Saharan African countries that were formerly United Kingdom colonies. In those States formerly under British colonial rule, a so-called “dualist” theory of the relationship between public international law, and the status of the former, the implementation of international treaties remains a problematic area – thus, certain sub-Saharan African judges, in adherence to the British principle of “dualism,” may not see an international treaty, such as the New York Convention, as positive law to be applied in the absence of a national legislative enactment *expressly* incorporating its provisions as law. (On the other hand, African States that were formerly under French colonial rule in general have typically allowed the direct application of international law into their domestic national laws.)¹¹

Thus, certain domestic sub-Saharan African courts may simply refuse to apply the New York Convention for the enforcement of arbitral awards. By way of example, in a judgment by the Supreme Court of Nigeria in the 1982 *Murmansk* case (7 *YB Comm. Arb.* 349), despite the fact that Nigeria had acceded to the New York Convention, the Nigerian Supreme Court judged that the international treaty was *not* positive law to be directly applied without a national legislative enactment *directly* incorporating its provisions as “law.”¹²

In addition, in relation to Uganda – also a former United Kingdom colony – it has been written that although the State had enacted the New York Convention, “[the latter] does not yet have legal force in the country as it has not been incorporated into domestic law. A holder of an award made in a Convention country seeking to enforce it in Uganda would be

¹⁰ Amazu Asouzu, *African States and the Enforcement of Arbitral Awards: Some Key Issues*, (15)1 *Arbitration International*, (1999) 5.

¹¹ *Ibid.*, p. 14 (1999).

¹² *Ibid.*, p. 14 and fn. 67 (1999). The need to incorporate international treaties has also been true for other treaties passed by ex-British colonies, such as the 1952 International Convention relating to the Arrest of Seagoing Ships, where the Convention was acceded to by Nigeria but was found to be non-binding in Nigeria in the case *American International Insurance Co. Ltd v. Ceekay Traders Ltd* (1980), 1 ALR Comm. 14, as it had never been brought into force by municipal legislation. See, e.g., Amazu Asouzu, *African States and the Enforcement of Arbitral Awards: Some Key Issues*, 15(1) *Arbitration International*, (1999) fn. 67.

short-changed because she would not be able to have the benefit of the provisions of the Convention as these do not yet have legal force in Uganda.”¹³

A further problem for States that have ratified the New York Convention is that the application of the New York Convention in relation to sub-Saharan Africa can be problematic insofar as it has been applied so rarely in sub-Saharan Africa as to reveal few constant trends in its application, making the interpretation of the New York Convention unpredictable in the region.¹⁴

Moreover, other difficulties with the implementation of the New York Convention include the narrow scope of arbitration laws in many sub-Saharan African countries and the lack of familiarity of judges and domestic legal practitioners vis-à-vis the New York Convention.¹⁵

Furthermore, asserting a claim for setting aside or the suspension of an award permits – indirectly – opposition to the enforcement of an arbitral award. This was anticipated by the New York Convention, which provides that a competent court of a country where the arbitration took place may set aside or suspend an award “in which, or under the law of which, that award was made.”¹⁶ In such a case, the “authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award...”¹⁷

¹³ See Matthias Nalyanya, *Arbitration in Uganda: Towards Reform* (June 1996) (unpublished L.L.M. Essay: London School of Economics) cited in Amazu Asouzu, *African States and the Enforcement of Arbitral Awards: Some Key Issues*, (15)1 *Arbitration International*, (1999), fn. 46.

¹⁴ Amazu Asouzu, *African States and the Enforcement of Arbitral Awards: Some Key Issues*, (15)1 *Arbitration International*, (1999) p. 5.

¹⁵ *Ibid.*, p. 5.

¹⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, Art. V. e: “V. e The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.”

¹⁷ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, Art. VI: “VI. If an application for the setting aside or the suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award...”

Thus, were an arbitral clause to indicate that the seat of arbitration were to be held in a country in sub-Saharan Africa (which admittedly is rare), or that the applicable law of the arbitration was to be that of a country of sub-Saharan Africa (which also appears to be rare), numerous difficulties could arise concerning the enforcement of an arbitral award that had been rendered.

Finally, the municipal laws of certain sub-Saharan African States pose additional problems to the enforcement of commercial arbitral awards, regardless of whether those States have enacted the New York Convention.

C. Additional Problems regarding the State of Sub-Saharan Arbitration Laws and the Enforcement of Arbitral Awards

First, the laws of sub-Saharan Africa relating to international arbitration are generally diverse, and sometimes outdated, when they exist at all. For instance, Cameroon's laws have historically been a blend of both French Civil Law and English Common Law, based on the historical fact that Cameroon was once both a French and a United Kingdom colony.

In addition, very few sub-Saharan African States have adopted the UNCITRAL Model Law on arbitration, although national laws based on the UNCITRAL Model Law would provide a useful, uniform set of laws regarding international arbitration and would also aid in the enforcement of international arbitral awards in sub-Saharan African countries by providing uniform grounds for setting aside international arbitral awards.¹⁸ Those few sub-Saharan African States which have incorporated the UNCITRAL Model Law into their domestic legislation include only Madagascar (1998), Nigeria (1990), Uganda (2000), Zambia (2000) and Zimbabwe (1996).¹⁹

That is not to say that sub-Saharan African States have done nothing to attempt to improve international arbitral regimes in the region. Relatively recently, French-speaking sub-Saharan African nations have enacted a treaty creating *l'Organisation pour l'harmonisation en Afrique du droit des affaires*²⁰ ("OHADA"), as well as instituting a *Common Court of Justice and*

¹⁸) See UNCITRAL Model Law, *available at*: <http://www.jus.uio.no/lm/un.arbitration.model.law.1985/34.html>.

¹⁹) See UNCITRAL Model Law list of contracting States, *available at*: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

²⁰) Translation: "The Organization for the Harmonization in Africa of Business Law."

Arbitration – which came into being on June 11, 1999 – in order to standardize business law and to provide for a uniform forum for international arbitrations.²¹ The OHADA treaty currently applies to 16 Francophone members of sub-Saharan Africa, namely Benin, Burkina Faso, Cameroon, Central Africa, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal, Chad, and Togo, and is expected to expand in the future. Yet, while the OHADA *Common Court of Justice and Arbitration* came into being on June 11, 1999, as of December 2008 it had tried a mere 29 cases.²² Interestingly, the *Common Court of Justice and Arbitration* allows investors in OHADA member States to sue OHADA member States, much as an investor has the right to sue States under the ICSID Convention, and indeed one OHADA Member State has already been sued by an investor.²³

While the *Common Court of Justice and Arbitration* institutes common rules for international arbitrations within the OHADA member States, and may well be a step in the right direction to creating a truly functional international arbitration regime in sub-Saharan Africa, it is far too early to know whether the *Common Court of Justice and Arbitration* will play a significant role in international arbitrations in Africa over time.

Moreover, as OHADA member States remain a minority of sub-Saharan African States, the *Common Court of Justice and Arbitration* does nothing to resolve problems concerning international arbitration regimes in the majority of sub-Saharan African States.

D. *Certain Examples of Sub-Saharan's African States' Refusals to Enforce Commercial Arbitral Awards*

Although literature is scarce on the non-enforcement and execution of ICC awards and other commercial awards in sub-Saharan Africa – likely due to the confidentiality of arbitrations – there are certain examples to be found of sub-Saharan States simply refusing to pay ICC awards and other commercial awards.

²¹ See *Plaquette OHADA*, available at: http://www.ohada.com/plaquette_french.pdf.

²² Symposium, “La sous Commission AFRIQUE/OHADA”, held at the Paris Bar (December 3, 2008).

²³ *Ibid.*

For instance, in *Walker International Holding Limited, Plaintiff-Appellant, v. The Republic of Congo; Caisse Congolaise D'amortissement, Defendants-Appellees, and Murphy Exploration & Production Company International, Garnishee-Appellee*, the Republic of Congo ("ROC") refused to pay an ICC award it owed Walker International Holdings Limited ("Walker").²⁴

By way of background, the claimant had brought ICC arbitral proceeding in Paris, France. The ICC arbitral tribunal found that the ROC was liable to Walker. After French courts upheld the award, Walker registered the US\$ 26,093,251 award in the United States District Court for the District of Columbia.²⁵

Yet, the United States Court of Appeals, Fifth Circuit, determined that the magistrate judge correctly found that certain garnished funds of a debtor to the ROC were not "used for any commercial activity." In other words, the ROC was protected by sovereign immunity under American law, as the garnished funds were not commercial in nature.²⁶ (*See infra* at pp. 156–158 for further comments on the enforcement of awards and the defense of State sovereign immunity.)

Accordingly, the district court's decision to vacate the Temporary Restraining Order, dissolve the writs of attachment and garnishment, and dismiss the action were affirmed by the court of appeals. Walker's motions to order the disbursement of a surety bond were likewise denied.

After the Supreme Court of the United States denied *certiorari* for the enforcement of the award, the Plaintiff-Appellant appears to have recovered nothing.²⁷

Similarly, in *Murmansk State Steamship Line v. Kano Oil Millers*, a decision of the Supreme Court of Nigeria dated 14 December 1974, the Supreme Court of Nigeria simply refused to enforce an arbitral award against the local respondent.²⁸

²⁴) *Walker Intern. Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 232 (5th Cir. 2004).

²⁵) *Ibid.*

²⁶) *Walker Intern. Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 235 (5th Cir. 2004).

²⁷) *Walker Intern. Holdings Ltd. v. Republic of Congo*, 544 U.S. 975 (2005) (*petition for certiorari denied*).

²⁸) *Murmansk State Steamship Line v. Kano Oil Millers*, [1974] 1 ALR 3; (1982) 7 Y B Comm. Arb. 349 (excerpts of decision of the Supreme Court of Nigeria dated 14 December 1974).

In addition, in the case *Transvaal Alloys (Proprietary) Ltd v. Polysius (Proprietary) Ltd and Anor*, the Supreme Court of Witwatersrand, South Africa, also refused to enforce an award against the local respondent.²⁹

While it is clear that various commercial arbitral awards could not be successfully enforced against sub-Saharan African States, this stands in contrast to ICSID awards, which appear to be more likely to be enforced and paid by sub-Saharan Africa States.

II. Enforcement of ICSID Awards Against Sub-Saharan African States

As of the date of this article, there are 155 signatories to the ICSID Convention.³⁰ The vast majority of sub-Saharan African countries – 39 (see Annex II, *infra*) – have ratified this Convention, with the notable exceptions of Angola, Cape Verde, Equatorial Guinea, Eritrea, and South Africa. (Ethiopia, Guinea Bissau, and Namibia have signed the convention, although it has not entered into force in these States.)

The ICSID Convention – and its associated BIT's and Investment Agreements giving consent to ICSID jurisdiction – offer protections to investors to incite them to invest in a host State. These usually include, *inter alia*, payment for the expropriation of the investor's investment by the host State, fair and equitable treatment by the host State, the guarantee of full protection and security by the host State, protection from arbitrary or discriminatory treatment by the host State, national treatment by the host State, and most-favored-nation treatment for an investor in the host State.³¹

Under Article 54(1) of the ICSID Convention awards are to be recognized as binding and their pecuniary obligations are to be enforced “as if it were a final judgment of a court in that State.” Recognition and enforcement may be sought not only in the host State, but in any State that is a

²⁹) *Transvaal Alloys (Proprietary) Ltd v. Polysius (Proprietary) Ltd and Anor*, Supreme Court of Witwatersrand, South Africa (decision dated 24 February 1982).

³⁰) See International Center For Investment Disputes Website, available at: http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates_Home.

³¹) Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law*, pp. 119–186 (Oxford University Press, 2008).

party to the ICSID Convention. The choice of where to enforce an ICSID award is typically based on a venue with suitable assets that may be seized.³²

Enforcing awards or initiating ICSID arbitrations against sub-Saharan African States runs up against certain hurdles. First and foremost, (A) sub-Saharan African States have enacted relatively few BIT's giving consent to international arbitration, precluding consent to ICSID jurisdiction and indirectly precluding the ability of an investor to bring a claim or enforce an award against a host State. Second, (B) as with all States, the defense of sovereign immunity may be raised to defeat the execution of an award. Third, (C) an investor may be unable to pursue the assets of entities merely associated with a Contracting State. And finally (D), investors may be unable (or unwilling) to attempt to enforce ICSID awards in the debtor State itself – where the bulk of recoverable assets may be located – and may be forced to seek recovery elsewhere, where there might not be assets to satisfy the award in full.

Of course, even if a sub-Saharan African State which is a party to the ICSID Convention defaults on its obligation to enforce an award rendered against it, under Article 27(1) of the Convention, a Contracting State whose national is an unsatisfied award creditor may request diplomatic protection under Article 64 of the ICSID Convention or bring an international claim before the International Court of Justice ("ICJ") against the defaulting Contracting State regarding the application of the ICSID Convention.³³ The consistent effectiveness of this approach, however, is unclear. This may be because investors cannot necessarily rely on their home State to implement diplomatic protection (which in any event has its limits) or to bring an ICJ claim against a defaulting State.

Nonetheless, it appears that most sub-Saharan African States have allowed ICSID awards against them to be enforced. Authors have hypothesized that this is because ICSID has close ties to the World Bank, giving sub-Saharan African States the impression that they have incentives to enforce awards rendered against them so as not to affect their creditworthiness with the World Bank.³⁴

³²) Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law*, p. 288 (Oxford University Press 2008).

³³) Christoph Schreuer, *The ICSID Convention: A Commentary*, p. 222 (Cambridge University Press 2001), "Articles 26 and 27".

³⁴) Redfern & Hunter, *International Arbitration*, p. 445 (Sweet & Maxwell, 1999, 3rd edition).

A. Sub-Saharan African States have Enacted Relatively Few BIT's, Thereby Precluding Investors from Raising Claims against Multiple States

Whereas over 2,200 Bilateral Investment Treaties ("BIT's") have been ratified since the first known BIT was concluded in 1959 between Germany and Pakistan, relatively few BIT's have been ratified by sub-Saharan African States.³⁵ While consent to ICSID jurisdiction may also be given via investment agreements, specific consent, investment laws, and multilateral treaties, the number of BIT's signed by sub-Saharan African States serves as a useful proxy to consent to ICSID jurisdiction.

Just as many sub-Saharan African States have not signed the New York Convention – making the enforcement of international commercial arbitral awards in sub-Saharan Africa difficult – many sub-Saharan African States have enacted relatively few BIT's, limiting their consent to ICSID jurisdiction. Thus, *a priori*, investors of numerous nationalities lack standing to sue a sub-Saharan African State in a neutral international arbitration forum for violations when their investment is affected by measures taken by the State and may lack the ability to even initiate an arbitration against a sub-Saharan African host State (let alone to enforce an award against such a State).

While sub-Saharan African countries have signed BIT's with other states, there is a marked tendency of such countries to have enacted very few BIT's. Annex I (*see infra*, at pp. 163–166), derived from UNCTAD's list of country-specific BIT's,³⁶ shows that the majority of sub-Saharan countries have enacted relatively few BIT's to protect investments, thereby precluding the standing of an investor to sue a sub-Saharan State in which it invests in a neutral international arbitration forum (unless an investment agreement, internal law, specific consent, or a multilateral agreement giving consent to ICSID jurisdiction has already been agreed upon).

By way of comparison, the United Kingdom alone has enacted 91³⁷ BIT's with other countries,³⁸ whereas sub-Saharan African States – other

³⁵ Noah Rubins & N. Stephan Kinsella, *International Investment, Political Risk and Dispute Resolution: A Practitioner's Guide*, p. 191 (Oceana Publications, 2005).

³⁶ UNCTAD List of Country-Specific Bilateral Investment Treaties, *available at*: <http://www.unctad.org/Templates/Page.asp?intItemID=2344&lang=1>.

³⁷ UNCTAD List of United Kingdom Bilateral Treaties Concluded as of June 1, 2008, *available at*: http://www.unctad.org/sections/dite_pcbb/docs/bits_uk.pdf.

³⁸ Noah Rubins & N. Stephan Kinsella, *International Investment, Political Risk and Dispute Resolution: A Practitioner's Guide*, p. 492 (Oceana Publications, 2005).

than South Africa, Ethiopia, Mozambique, Nigeria, and Sudan – have enacted no more than *eight* BIT's with other States.³⁹

Thus, various potential investors of multiple nationalities have no possibility of initiating investor/State arbitrations against multiple sub-Saharan African host States, as there is no BIT giving consent to jurisdiction under Article 25 of the ICSID Convention to even raise a claim against such a State in arbitration. This, of course, greatly restricts an investor's ability to recover damages for treaty breaches by many sub-Saharan African States and precludes the protection that an investor might reasonably expect for its investments in certain sub-Saharan African host States.

Ironically, despite the dearth of enacted BIT's by sub-Saharan African States, of the 152 concluded ICSID arbitrations (as of November 24, 2008),⁴⁰ sub-Saharan Africa has been surprisingly active in ICSID proceedings, with 34 ICSID proceedings concluded involving sub-Saharan African States, or roughly 22% of all ICSID arbitrations. It is worth noting that, in general, investors bring claims against sub-Saharan African States, and not vice-versa. Indeed, only one case (*Gabon v. Société Serete S.A.*) has been brought by a sub-Saharan African State against an investor.) The 34 concluded cases involving sub-Saharan African States are listed in Annex III to this article.

Unfortunately, whereas ICSID provides a list of concluded cases, it does not provide information on whether awards against sub-Saharan African countries were successfully enforced and executed. Only from other sources is it possible to glean whether certain ICSID awards were paid by the award debtor.

B. *Lack of Enforcement on the Basis of the Defense of Sovereign Immunity*

Of course, even if an ICSID award has been made against a sub-Saharan African State, the actual *execution* of an award may be complicated by a State's defense of sovereign immunity (a defense which is possible for all States).

Thus, execution of an ICSID award (for instance, by attaching the property or assets of a State debtor) may prove to be difficult or impossible, as

³⁹) See Annex I.

⁴⁰) ICSID List of Concluded Cases, *available at*: <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtlsRH&actionVal=ListConcluded>.

execution is subject to the defense of sovereign immunity from execution in a Contracting State where execution of an ICSID award may be sought.⁴¹

For instance, in the case *Liberian Eastern Timber Corporation (“LETCO”) v. Liberia* (Case No. ARB/83/2),⁴² Liberia’s plea to vacate the motion granting enforcement was denied, but its plea to vacate *execution* against its property and assets in the United States (tonnage and registration fees and taxes collected by a Liberian agent) were granted on the basis of sovereign immunity from execution.⁴³

LETCO conceded that the registry fees and tonnage taxes were fees due to Liberia, but argued that a portion of that amount was reserved for operating and administrative expenses including profits by US nationals who rendered services in collecting the funds.⁴⁴ The second portion was said to be a reflection of commercial activities immune to the United States’ Foreign Sovereign Immunities Act (“FSIA”). Yet, Liberia’s argument against the seizure of such funds was accepted by the judge of the District Court of the Southern District of New York.

Another attempt was then made to seize Liberian assets in relation to the *LETCO v. Liberia* arbitration, which Liberia again defended against on the ground of sovereign immunity from execution before the District Court of Columbia. In this instance, LETCO attempted to attach bank accounts used by the Liberian Embassy.⁴⁵ Yet, the Court refused to attach the bank accounts used by the Liberian Embassy on the ground that the Embassy’s bank accounts were immune from attachment under the 1961 Vienna Convention on Diplomatic Immunity.⁴⁶ Thus, execution was stymied once again due to sovereign immunity considerations.

On the other hand, in the ICSID case *SOABI v. Senegal*,⁴⁷ the Paris Court of Appeals quashed the order of the President of the Paris *Tribunal de Grande Instance* ordering the enforcement of the ICSID award rendered against Senegal on the basis that recognition and enforcement of the award

⁴¹) Amazu Asouzu, *International Commercial Arbitration and African States* (Cambridge University Press, 2001), p. 382.

⁴²) 2 ICSID Reports (1986) 543.

⁴³) Amazu Asouzu, *International Commercial Arbitration and African States* (Cambridge University Press, 2001), p. 381.

⁴⁴) *Ibid.*, p. 383.

⁴⁵) *Ibid.*, pp. 393–395.

⁴⁶) *Ibid.*, p. 383.

⁴⁷) 2 ICSID Rep. (1994) 164.

in France was contrary to international public policy, as SOABI had not demonstrated that enforcement of the award would be made in such a way so as not to conflict with the immunity of execution against the State of Senegal.⁴⁸ This decision, however, was overturned by the French *Cour de Cassation*,⁴⁹ on the ground that the ICSID Convention established Articles 53 and 54 as an autonomous system for the recognition and enforcement of awards which excluded the system provided for in the French Code of Civil Procedure concerning international arbitration.⁵⁰ Thus, in this particular instance, the *Cour de Cassation* did order the disputed award to be executed. (It is unclear from the documents available, however, whether assets were finally recovered by SOABI following these enforcement proceedings.)

C. *The Inability to Pursue Assets of Entities Associated with Contracting States*

In another case, *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo* (ICSID Case No. ARB/77/12),⁵¹ an investor sought to execute an ICSID award against the Congo, but chose to pursue an entity linked to the State although that entity was not a party to the dispute nor the ICSID Award. This entity was the *Banque Commerciale Congolaise* ("BCC"). Thus, the question became whether a state bank was liable for an award rendered against the State, when the state bank was allegedly controlled by the losing party (the Congo). While the *Cour d'Appel de Paris* granted the investor *exequatur* against the bank to pay the award,⁵² in an unpublished judgment of March 12, 1985, the Court held that the related attachment was void.⁵³

The investor appealed, arguing that the Court was wrong to have held that the Congolese bank was not liable for Congo's debts, claiming that the BCC was an "emanation" of the State. The investor also argued that foreign State-owned bodies should be assimilated to those States that owned them. The investor's appeal, however, was dismissed on the ground that the control exercised by the State was insufficient to enable entities that

⁴⁸) Amazu Asouzu, *African States and the Enforcement of Arbitral Awards: Some Key Issues*, (15)1 *Arbitration International*, (1999) 33–34.

⁴⁹) Decision of French *Cour de Cassation* dated 11 June 1991, 2 ICSID Rep. 341 (1994).

⁵⁰) Amazu Asouzu, *African States*, (1999) 33–34.

⁵¹) 1 ICSID Reports 373–375 (1993).

⁵²) 1 ICSID Reports 369 (1993).

⁵³) See Amazu Asouzu, *International Commercial Arbitration and African States* (Cambridge University Press, 2001) 384.

depended on it to be held liable for its debts when those entities were separate from the State.⁵⁴

There are many similar examples of such rulings outside of the ICSID system, however, for the sake of brevity, they will not be dealt with in this article.

Interestingly, despite these rulings denying execution of the award, Congo did, eventually satisfy the award debt.⁵⁵ As noted *supra* at page 154, this may be because of ICSID's close relationship with the World Bank, which may give States the impression that their creditworthiness with the World Bank will be negatively impacted if they do not pay ICSID awards.

D. *Where to Enforce ICSID Awards Against Sub-Saharan African Countries*

As noted above, in all but one case, sub-Saharan African States have been respondents in ICSID arbitrations.

It is somewhat surprising, therefore, that to date no application for the enforcement and execution of an ICSID award has been made before a court in sub-Saharan Africa, where many sub-Saharan African assets are presumably located.⁵⁶

In fact, national proceedings for the recognition and enforcement of ICSID awards against African countries, to the best of our knowledge, as of 26 October 1998 had taken place in only *two* ICSID Contracting States – the United States and France.⁵⁷

This is presumably because foreign investors have more confidence in courts in France and the United States for the enforcement of awards, rather than before African courts – as the latter may well be under political pressure of the State against which the award was made.⁵⁸ Or, as claimed by another author, “[m]ore fundamentally, international arbitration is premised on a distrust of developing countries and their courts.”⁵⁹

⁵⁴ See Amazu Asouzu, *International Commercial Arbitration and African States* (Cambridge University Press, 2001), p. 385.

⁵⁵ Christoph Schreuer, *The ICSID Convention: A Commentary* (Cambridge University Press, 2001), “Article 54, p. 92, §52.”

⁵⁶ Amazu Asouzu, *African States*, 40.

⁵⁷ *Ibid.*, p. 40 (1999); see also Maurille Okilassali, *La Revue Trimestrielle de droit africain* 214 (n°839).

⁵⁸ A.A. Agyemang, *African Courts, the Settlement of Investment Disputes and the Enforcement of Awards*, 33 *J. African Law* (1989) 31, 35–36.

⁵⁹ Andrew Armfelt, *Avoiding the Arbitration Trap*, *Financial Times*, 27 October 1992, at 20.

Thus, the enforcement of unpaid ICSID awards in sub-Saharan African has yet to be tested, despite the fact that many of the host State's assets are presumably to be found in the sub-Saharan host State itself.

Conclusion

In conclusion, certain difficulties remain in pursuing and enforcing arbitral awards against sub-Saharan African States, both in the context of ICC, other commercial arbitral proceedings, and to a lesser extent in the context of ICSID proceedings. This does not have to be the case.

It would greatly assist the foreign investment climate in sub-Saharan African countries if sub-Saharan African States were perceived as States where foreigners could easily do business and where arbitral awards could be readily enforced should a dispute arise. Thus, it would be useful for each sub-Saharan African State to enforce treaties such as the New York Convention, to signal to foreign investors that awards will be executed in the region, whether they are awards for damages, or other awards (such as awards imposing obligations on the award debtor).

To this end, the remaining half of sub-Saharan African States that have not enacted the New York Convention should seriously consider doing so, should consider adopting the UNCITRAL Model Law on arbitration, and should contemplate greatly expanding the number of States that are members of OHADA (despite the fact that arbitration before the *Common Court of Justice and Arbitration* has yet to be tested in full, OHADA may well be a step in the right direction towards a more effective arbitral regime in sub-Saharan Africa).

In addition, those sub-Saharan African countries that have enacted the New York Convention but have not incorporated it into their domestic legislation should seriously consider doing so, so that the Convention will not simply be ignored by local courts when an attempt to enforce an arbitral award is made.

Of course, the above proposals depend on the political will of sub-Saharan African countries to improve the investment climate in the region for foreign investors, and it is up to sub-Saharan African States to determine which measures they are willing to take.

While a legal approach to improving international arbitration regimes and the enforcement of arbitral awards in sub-Saharan Africa would not

solve all problems relating to the investment climate in all sub-Saharan African States – for instance, corruption in certain States⁶⁰ (as in many developing nations and developed nations) remains a serious problem in sub-Saharan Africa – such a legal approach would undoubtedly be a step in the right direction.

At a minimum, the enactment of the New York Convention by more States in the region, the adoption of the UNCITRAL Model Law, and the expansion of OHADA would send a signal to foreign investors that sub-Saharan African States are serious about attracting foreign investment and protecting the rights of foreign investors who invest in sub-Saharan Africa – and would presumably accelerate the economic development of States in the region.

Concerning investor/State arbitrations, it would also appear to be prudent for sub-Saharan African States to enact further BIT's or regional investment treaties granting consent to ICSID jurisdiction (or international arbitration) to instill investor confidence in investing in sub-Saharan Africa, for the benefit of both investors and States attempting to attract foreign investment and to further sub-Saharan Africa's economic development.

This, however, is again a question of the political will of sub-Saharan African States, which can only be determined by those States themselves.

⁶⁰ As analyzed by Transparency International in 2008, many – but not all – sub-Saharan African States are highly corrupt (as well as a number of other developing countries). With only one exception – i.e., Botswana, which was ranked the 36th most corrupt country in the world – all sub-Saharan African countries were ranked 54th (South Africa) or worse in terms of corruption. In fact, Transparency International ranked 6 of the 10 most corrupt countries in the world as located in sub-Saharan Africa. See Transparency International Corruption Chart (2008), *available at*: http://www.transparency.org/policy_research/surveys_indices/cpi/2008. This is of course not to say that corruption and illegal dealings are a problem of sub-Saharan Africa alone, nor that investors in sub-Saharan Africa do not play a role in the problem. For instance, in the case *Inceysa v. Republic of El Salvador* (ICSID ARB/0326), the investor in question engaged in illegal activities by filing false documents and making false statements to illegally win a tender held in El Salvador. See *Inceysa v. Republic of El Salvador* (ICSID ARB/03/26), *available at*: http://ita.law.uvic.ca/documents/Inceysa_Vallisoletana_en_001.pdf. Similarly, in *World Duty Free v. The Republic of Kenya* (ICSID ARB/00/7), *available at*: <http://ita.law.uvic.ca/documents/WDFv.KenyaAward.pdf>, the arbitral tribunal refused to consider what appeared to be a promising claim of breach of contractual rights on the basis that the investor had engaged in corruption by giving a US\$ 2 million bribe to the President of Kenya, Daniel Arap Moi, for a license to operate and equip certain duty free complexes at the Nairobi and Mombassa airports and to upgrade passenger facilities at these complexes.

**Annex I: BIT's Signed by Sub-Saharan African States as of
December 12, 2008⁶¹**

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- 1 Angola has merely **three** BIT's that have entered into force with Cape Verde, Germany, and Italy.
 - 2 Benin has **four** BIT's that have entered into force with Luxembourg, Germany, Switzerland, and the United Kingdom.
 - 3 Botswana has only **one** BIT that has entered into force with Switzerland.
 - 4 Burkina Faso has **six** BIT's that have entered into force with Luxembourg, Germany, Guinea, Malaysia, the Netherlands, and Switzerland.
 - 5 Burundi has only **three** BIT's that have entered into force with Luxembourg, Germany, and the United Kingdom.
 - 6 Cameroon has **eight** BIT's that have entered into force with Luxembourg, Germany, Italy, the Netherlands, Romania, Switzerland, the United Kingdom and the United States.
 - 7 Cape Verde has **eight** BIT's that have entered into force with Angola, Austria, China, Cuba, Germany, Netherlands, Portugal and Switzerland.
 - 8 The Central African Republic has merely **two** BIT's that have entered into force with Germany and Switzerland.
 - 9 Chad has merely **three** BIT's that have entered into force with Germany, Italy, and Switzerland.
 - 10 Comoros has only **one** BIT that has entered into force with Egypt.
 - 11 Côte d'Ivoire has entered into only **five** BIT's that have entered into force with Germany, the Netherlands, Sweden, Switzerland, and the United Kingdom.
 - 12 The Democratic Republic of the Congo has only **four** BIT's that have entered into force with France, Germany, Switzerland, and the United States.
 - 13 Djibouti has merely a **single** BIT that has entered into force with Switzerland.

⁶¹) See UNCTAD List of Country-Specific Bilateral Investment Treaties, *available at*: <http://www.unctad.org/Templates/Page.asp?intItemID=2344&lang=1>.

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- 14 Equatorial Guinea has merely two BIT's that have entered into force with France and Spain.
- 15 Eritrea has merely a single BIT that has entered into force with Italy.
- 16 Ethiopia has eighteen BIT's that have entered into force with Austria, China, Finland, France, Germany, Iran, Israel, Italy, Kuwait, Malaysia, the Netherlands, the Russian Federation, Sudan, Sweden, Switzerland, Tunisia, Turkey, and Yemen.
- 17 Gabon has enacted only five BIT's that have entered into force with Germany (twice), Romania, Spain, and Switzerland.
- 18 Gambia has enacted only two BIT's that have entered into force with the Netherlands and Switzerland.
- 19 Ghana has eight BIT's that have entered into force with China, Denmark, Germany, Malaysia, the Netherlands, Montenegro, Switzerland, and the United Kingdom.
- 20 Guinea has merely five BIT's that have entered into force with Burkina Faso, Italy, Malaysia, Montenegro, and Switzerland.
- 21 Guinea Bissau has merely a single BIT that has entered into force with Portugal.
- 22 Kenya has only three BIT's that have entered into force with Germany, Italy, and the Netherlands.
- 23 Lesotho has only two BIT's that have entered into force with Germany and the United Kingdom.
- 24 Liberia has only three BIT's that have entered into force with France, Germany, and Switzerland.
- 25 Madagascar has six BIT's that have entered into force with China, France, Mauritius, Norway, Sweden, and Switzerland.
- 26 Malawi has only one BIT that has entered into force with Egypt.
- 27 Mali has five BIT's that have entered into force with Algeria, Egypt, Germany, Netherlands, and Switzerland.
- 28 Mauritania has five BIT's that have entered into force with Germany, the Republic of Korea, Lebanon, Romania, and Switzerland.

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- 29 Mozambique has entered into sixteen BIT's with Algeria, China, Cuba, Egypt, Finland, France, Indonesia, Italy, Mauritius, the Netherlands, Portugal, South Africa, Sweden, Switzerland, the United Kingdom, and the United States.
 - 30 Namibia has entered into six BIT's with Finland, France, Germany, Netherlands, Spain, and Switzerland.
 - 31 Niger has entered into only three BIT's with Egypt, Germany, and Switzerland.
 - 32 Nigeria has entered into eleven BIT's with Finland, France, Italy, the Republic of Korea, Netherlands, Romania, Serbia and Montenegro, Spain, Switzerland, China, and the United Kingdom.
 - 33 The Republic of the Congo has entered into merely five BIT's with Germany, Italy, Switzerland, the United Kingdom, and the United States.
 - 34 Rwanda has entered into only two BIT's with Germany and Switzerland.
 - 35 Senegal has entered into eight BIT's with Germany, the Republic of Korea, Netherlands, Romania, Sweden, Switzerland, the United Kingdom, and the United States.
 - 36 Sierra Leone has entered into only one BIT with Germany.
 - 37 Somalia has entered into only two BIT's with Egypt and Germany.
 - 38 South Africa has entered into twenty-two BIT's with Argentina, Austria, Belgium and Luxembourg, China, Cuba, Czech Republic, Denmark, Finland, France, Germany, Greece, Iran, Italy, the Republic of Korea, Mauritius, Mozambique, Netherlands, the Russian Federation, Spain, Sweden, Switzerland, and the United Kingdom.
 - 39 Sudan has entered into twelve BIT's with China, Egypt, Ethiopia, France, Germany, Iran, Jordan, Lebanon, Morocco, the Netherlands, Oman, and the Syrian Arab Republic.
 - 40 Swaziland has entered into only two BIT's with Germany and the United Kingdom.
 - 41 Togo has entered into only two BIT's, with Germany and Switzerland.

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- 42 Uganda has entered into seven BIT's with Denmark, France, Germany, Italy, the Netherlands, Switzerland, and the United Kingdom.
 - 43 Tanzania has entered into eight BIT's with Denmark, Finland, Germany, Italy, the Netherlands, Sweden, Switzerland, and the United Kingdom.
 - 44 Zambia has entered into only two BIT's with Germany and Switzerland.
 - 45 Zimbabwe has entered into six BIT's with China, Denmark, Germany, the Netherlands, Serbia and Montenegro, and Switzerland.
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**ANNEX II: Sub-Saharan Countries that have enacted the ICSID
Convention as of December 12, 2008⁶²**

1 Benin	21 Madagascar
2 Botswana	22 Malawi
3 Burkina Faso	23 Mali
4 Burundi	24 Mauritania
5 Cameroon	25 Mozambique
6 Central African Republic	26 Namibia
7 Chad	27 Niger
8 Comoros	28 Nigeria
9 Congo	29 Rwanda
10 Congo, Democratic Republic of	30 Senegal
11 Côte d'Ivoire	31 Sierra Leone
12 Ethiopia	32 Somalia
13 Gabon	33 Sudan
14 Gambia, The	34 Swaziland
15 Ghana	35 Tanzania
16 Guinea	36 Togo
17 Guinea-Bissau	37 Uganda
18 Kenya	38 Uruguay
19 Lesotho	39 Zambia
20 Liberia	40 Zimbabwe

⁶² See ICSID List of Contracting States, *available at*: <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English>.

**Annex III: ICSID Cases Involving Sub-Saharan African States as of
December 12, 2008⁶³**

- 1 Adriano Gardella S.p.A. v. Côte d'Ivoire (ICSID Case No. ARB/74/1)
- 2 Gabon v. Société Serete S.A. (ICSID Case No. ARB/76/1)
- 3 AGIP S.p.A. v. People's Republic of the Congo (ICSID Case No. ARB/77/1)
- 4 S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo (ICSID Case No. ARB/77/2)
- 5 Guadalupe Gas Products Corporation v. Nigeria (ICSID Case No. ARB/78/1)
- 6 Klöckner Industrie-Anlagen GmbH and others v. United Republic of Cameroon and Société Camerounaise des Engrais (ICSID Case No. ARB/81/2)
- 7 SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H. v. Democratic Republic of Madagascar (ICSID Case No. CONC/82/1)
- 8 Société Ouest Africaine des Bétons Industriels v. Senegal (ICSID Case No. ARB/82/1)
- 9 Liberian Eastern Timber Corporation v. Republic of Liberia (ICSID Case No. ARB/83/2)
- 10 Atlantic Triton Company Limited v. People's Revolutionary Republic of Guinea (ICSID Case No. ARB/84/1)
- 11 Maritime International Nominees Establishment v. Republic of Guinea (ICSID Case No. ARB/84/4)
- 12 Société d'Etudes de Travaux et de Gestion SETIMEG S.A. v. Republic of Gabon (ICSID Case No. ARB/87/1)
- 13 Vacuum Salt Products Ltd. v. Republic of Ghana (ICSID Case No. ARB/92/1)
- 14 American Manufacturing & Trading, Inc. v. Democratic Republic of the Congo (ICSID Case No. ARB/93/1)

⁶³ See ICSID List of Concluded Cases, *available at*: <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtlsRH&actionVal=ListConcluded>.

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- 15 SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H. v. Madagascar (ICSID Case No. CONC/94/1)
 - 16 Antoine Goetz and others v. Republic of Burundi (ICSID Case No. ARB/95/3)
 - 17 Société d'Investigation de Recherche et d'Exploitation Minière v. Burkina Faso (ICSID Case No. ARB/97/1)
 - 18 Société Kufpec (Congo) Limited v. Republic of Congo (ICSID Case No. ARB/97/2)
 - 19 Compagnie Française pour le Développement des Fibres Textiles v. Côte d'Ivoire (ICSID Case No. ARB/97/8)
 - 20 International Trust Company of Liberia v. Republic of Liberia (ICSID Case No. ARB/98/3)
 - 21 Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/98/7)
 - 22 Alimenta S.A. v. Republic of The Gambia (ICSID Case No. ARB/99/5)
 - 23 Patrick Mitchell v. Democratic Republic of the Congo (ICSID Case No. ARB/99/7)
 - 24 World Duty Free Company Limited v. Republic of Kenya (ICSID Case No. ARB/00/7)
 - 25 Ridgpointe Overseas Developments, Ltd. v. Democratic Republic of the Congo and Générale des Carrières et des Mines (ICSID Case No. ARB/00/8)
 - 26 Société d'Exploitation des Mines d'Or de Sadiola S.A. v. Republic of Mali (ICSID Case No. ARB/01/5)
 - 27 Lafarge v. Republic of Cameroon (ICSID Case No. ARB/02/4)
 - 28 Miminco LLC and others v. Democratic Republic of the Congo (ICSID Case No. ARB/03/14)
 - 29 TG World Petroleum Limited v. Republic of Niger (ICSID Case No. CONC/03/1)
 - 30 Togo Electricité v. Republic of Togo (ICSID Case No. CONC/05/1)

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- 31 African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/05/21)
 - 32 Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania (ICSID Case No. ARB/05/22)
 - 33 Scancem International ANS v. Republic of Congo (ICSID Case No. ARB/06/12)
 - 34 Shareholders of SESAM v. Central African Republic (ICSID Case No. CONC/07/1)
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