



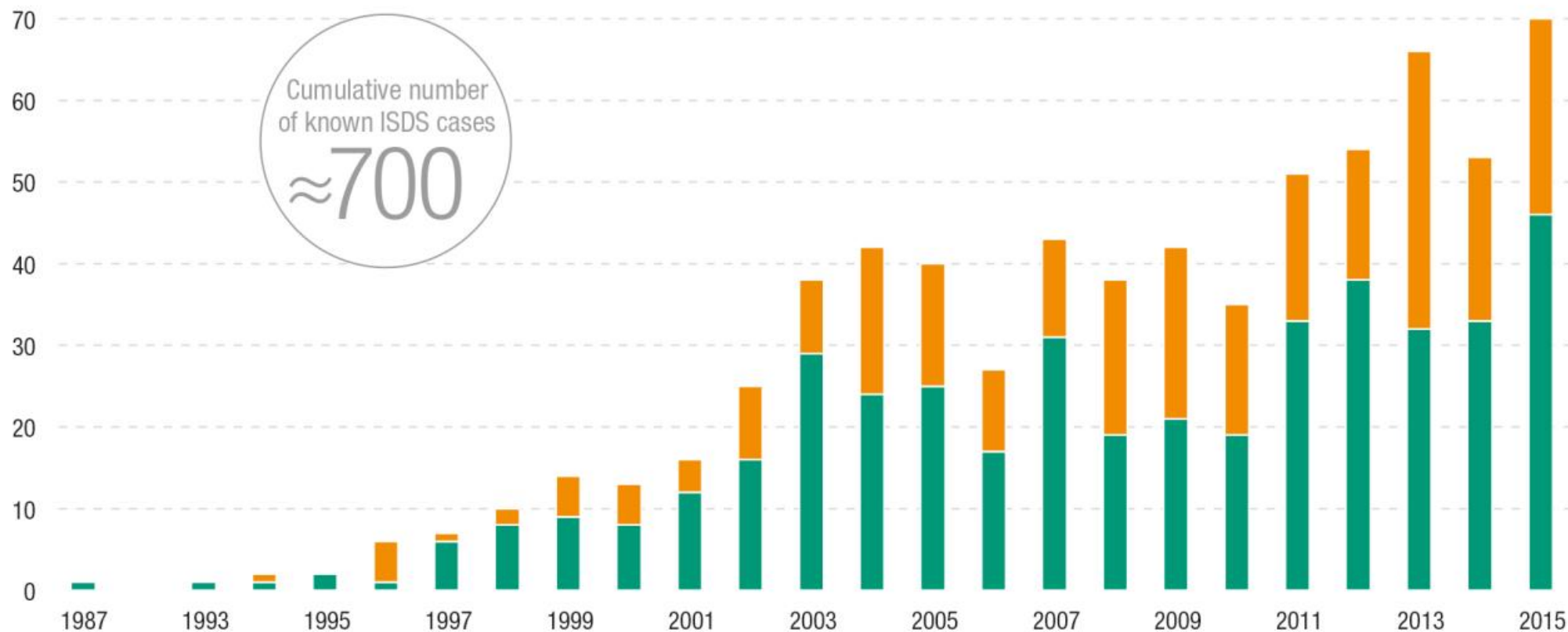
МІНІСТЕРСТВО
ЮСТИЦІЇ

NIGHTMARE ON THE STATE SIDE:
A SELECTION OF ALARMING TRENDS
IN INVESTOR-STATE ARBITRATION

MAKSYM KODUNOV
Ministry of Justice of Ukraine

Annual
number of cases

ICSID Non-ICSID

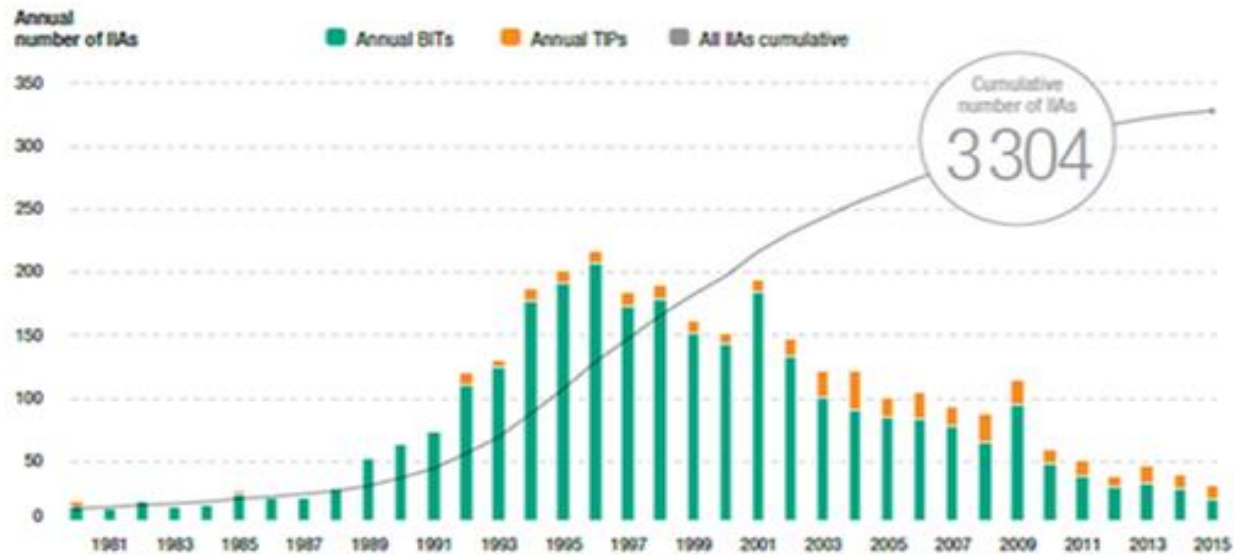
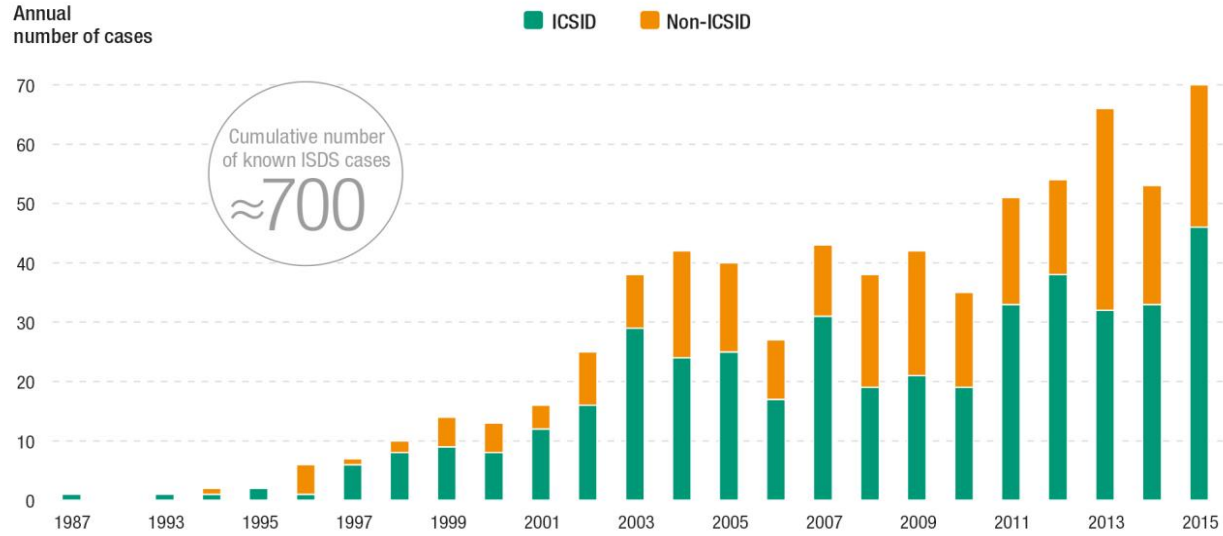


Annual number of IAs

■ Annual BITs
 ■ Annual TPs
 ■ All IAs cumulative



DISPUTES AND TREATIES SUPERIMPOSED



- More of new disputes
- Less of new treaties
- Theoretical potential for growth: $(195 \text{ countries})^2 \div 2 = 19,012[.5]$ treaties
- A more realistic estimation: $195 \times 90 \div 2 = 8,775$ treaties
- Inference 1: no practical room for growth?
- Inference 2: no more volunteers?
- If Inference 2 is true, are there any legal trends discouraging states from proliferation of BIT network?

- Tokios Tokelés v Ukraine
- Champion Trading v Egypt
- Soufraki v United Arab Emirates

- Luccetti v Peru
- Italy v Cuba
- Ecuador v United States
- Kaliningrad Region v Lithuania

- Ioannis Kardassopoulos v Republic of Georgia
- CME / Lauder v Czech Republic
- Yukos International Limited v Russian Federation

MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile

Emilio Agustín Maffezini v Kingdom of Spain

Siemens AG v Argentine Republic

Hochtief AG v Argentine Republic

- *Epistola non erubescit*: ethical aspect of controversial awards against states
- ISDS bubble: real threat for ISDS practitioners
- No apparent relationship between size of state's BIT network and ability to attract investments
- North Korea: 11 BITs in force, no incoming investments
- Brazil's: lots of incoming foreign investment, no treaties with ISDS terms
- The Netherlands: 90 BITs used for corporate structuring
- Bolivia, Ecuador, Venezuela: withdrawals from ICSID
- South Africa and India: real prospects of withdrawal from treaties with ISDS terms
- Indonesia: serious intention not to renew treaties which are about to lapse



МІНІСТЕРСТВО
ЮСТИЦІЇ

THANK YOU FOR ATTENTION

www.minjust.gov.ua