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## The Corporate Assault on Latin American Democracy

### The Latest Phase

by JUSTIN DOOLITTLE

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Latin America has always been notoriously fertile ground for predatory corporations. For decades, aided by Western-backed governments that were as friendly to them as they were brutal to their own citizens, corporate behemoths made it their mission to suck the region dry – sometimes quite literally. The story of neoliberal plunder in that part of the world, as well as the popular backlash to it among Latin Americans, is hardly a new one. In recent years, though, the ever-aggressive corporate war on Latin American societies has entered a new phase, one in which major battles are being decided on the fourth floor of the World Bank headquarters in Washington, by an obscure and increasingly powerful institution known as the International Center for the Settlement of Investment Disputes.

The first thing you need to know about the ICSID is that it has the authority to make binding decisions that affect entire populations. Most of the time, such decisions are made by small tribunals, typically consisting of just a few people. This secretive institution is part of the ICSID Convention, a multilateral treaty that went into effect in October of 1966, to which 150 countries are currently party. The ICSID Convention “sought to remove major impediments to the free international flows of private investment posed by non-commercial risks and the absence of specialized international methods for investment dispute settlement.” If that sentence creeps you out, well, it should.

The structural and bureaucratic details of the ICSID are boring and involve a lot of corporate-speak. But basically, the ICSID establishes and oversees ostensibly independent tribunals responsible for arbitrating major disputes between private entities and governments. So, for example, when Country X tells Corporation Y that, after further consideration, it wants to change policy and forbid oil drilling in an environmentally vulnerable region, this is where Corporation Y goes to complain. A tribunal is formed and a judgment is eventually made. Both sides in any dispute must agree to the terms laid out, it should be noted, and they each have input in selecting the arbitrators. Nevertheless, with the ICSID's influence growing along with its caseload, we should consider the wisdom of having these decisions, which often hold major ramifications for both short and long-term environmental health, made via a process from which local residents – the people actually affected by said decisions – are so drastically disconnected.

In recent years, Venezuela, Ecuador, and Bolivia have withdrawn from the ICSID Convention, all for similar reasons. These governments cling to the quaint notion that their societies' resources ought to belong to the people who live there, and they view the ICSID as a way to grease the skids for the continued pillaging of said resources (which is usually accompanied, of course, by environmental degradation). Bolivia withdrew from the ICSID in 2007; in 2009, Ecuador followed suit. Venezuela finalized its withdrawal from the ICSID in 2012 as the Chavez administration was dealing with a number of disputes surrounding its nationalization policies in the 2000s. All of these governments cited concerns about sovereignty and the ICSID's persistent bias toward corporations and capital (these concerns reflect popular sentiment throughout Latin America). They've proposed an alternative system, involving tribunals based in South America, as opposed to Washington, D.C. In any case, a withdrawal from the ICSID is not a shield from claims by private interests, and states like Venezuela and Ecuador are still staring at billions of dollars in potential compensatory payments stemming from a number of cases over the last decade. States cannot simply ignore these judgments, as it would be viewed like a sovereign default, with all the economic risk that entails.

It involves fairly specialized knowledge, and therefore it's rarely discussed in popular political discourse, but a broader paradigm shift has taken place in this arena in recent years, one that, shockingly enough, favors the rights of transnational corporations. As a recent McClatchy piece on a high-profile dispute between Oceana Gold Corp. and the government of El Salvador put it, "international investment laws are empowering corporations to act against foreign governments that curtail their future profits, " and the ICSID is the vehicle these corporations are using to ensure that these profits are not threatened.

The widespread suspicion that this game is essentially rigged in favor of powerful private interests is not entirely unfounded. Here is Robert Bisso, the director of Social Watch, an international network of citizens' organizations, in a speech to the U.N. in May:

... over two thousand bilateral and regional trade and investment agreements signed in the last few decades have created new rights for transnational corporations, including rights that humans don't have: corporations have acquired the right to settle anywhere they want and bring with them any personnel they decide they need, they are allowed to repatriate profits without restrictions and even to litigate against governments in demand of profits lost because of democratically decided policies, not through local courts but via international arbitration panels

shaped to defend business interests and where human rights do not necessarily prevail. ICSID, the International Center for the Settlement of Investment Disputes, hosted by the World Bank, is an untransparent tribunal that displaces national judiciary and in a way creates its own law by way of ignoring human rights standards and environmental norms, even when they have been ratified as international treaties.

This trend should be cause for serious concern. And it's important to remember that these disputes are not about abstractions. Aside from the long-term environmental stakes, the decisions made on these matters impact the lives of ordinary people in myriad ways, and they also threaten the ability of democratic societies to set policy.

Take, for example, the aforementioned dispute between El Salvador and OceanaGold, on which the ICSID is set to rule sometime in the next few months. OceanaGold is a villainous Australia-based mining company – roughly a quarter of all cases heard by the ICSID have to do with mining, oil, gas, and related natural resource issues – that bought the Canadian company Pacific Rim in late 2013, and now would very much like to carry on with a mining project Pacific Rim had planned near El Salvador's main waterway, the San Sebastian River. Otherwise, OceanaGold wants \$301 million in compensation – from a perennially poor country with annual budgets well under \$1 billion.

Residents living near the El Dorado mine in the north of the country have risen in furious opposition to the mining project (a petition was recently delivered to OceanaGold with 200,000 signatures on it). Oddly, they don't want their water polluted so a foreign corporation can find gold; disease rates linked to mining-related arsenic poisoning in Lempa River have reportedly increased substantially. This is a poor, densely populated society already dealing with dire issues regarding the quality and availability of its water. It's also the kind of society most vulnerable to environmental degradation, not that this is of any concern to OceanaGold, nor to the ICSID, which, as Bisso said, is institutionally indifferent to environmental impact and human rights.

El Salvador effectively banned mining in 2008 and the policy has enjoyed bipartisan support there. This particular case, then – and there are other similar ones – raises very fundamental question about politics and sovereignty. Should a nation-state have the right to change policy when it believes the health of its people and its environment is threatened? Or should the rights and interests of transnational corporations be prioritized over literally everything else? This upcoming decision at the ICSID on the El Dorado case represents an important fork in the road on this matter.

This is not to suggest that the ICSID is a flagrantly biased institution that automatically rules in favor of corporations. It has made some reasonable decisions. Although a tribunal recently judged that Venezuela has to pay ExxonMobil \$1.6 billion for appropriated oil assets – a judgment that is now suspended as Venezuela seeks further amendments – the oil giant was seeking nearly ten times that amount, and the decision was hailed as a victory by the Maduro government.

But the fact that fairness sometimes wins over shameless economic aggression does not mean that this secretive, anti-democratic arbitration system is itself fair and sustainable. This system, in

fact, threatens the rights of democratic governments to set policy in their own societies, and it potentially threatens the livelihood of people who will never step foot in a fancy building in Washington, D.C., and whose influence is limited to signing their name to a petition. When people making tremendously consequential decisions are utterly detached from those who will actually be affected by said decisions – socially, politically, economically – democracy is not being respected. Which is just fine with the private interests who always seem to benefit from the erosion of democratic culture.