

**The Nature of ICSID Arbitration  
for Purposes of 28 U.S.C. § 1782**

Legal Opinion by

*Christoph Schreuer*

Vienna, July 7, 2022

**CONTENTS**

<b>1.</b>	<b>Introduction.....</b>	<b>2</b>
<b>2.</b>	<b>Origin and Nature of the ICSID Convention .....</b>	<b>4</b>
<b>3.</b>	<b>The Organization of ICSID.....</b>	<b>5</b>
<b>4.</b>	<b>Financing of ICSID’s Activities .....</b>	<b>7</b>
<b>5.</b>	<b>Legal Personality and Immunities of ICSID .....</b>	<b>7</b>
<b>6.</b>	<b>The Designation and Appointment of Arbitrators .....</b>	<b>9</b>
<b>7.</b>	<b>The Screening of Requests for Arbitration .....</b>	<b>11</b>
<b>8.</b>	<b>Jurisdiction of an ICSID Tribunal .....</b>	<b>12</b>
<b>9.</b>	<b>The ICSID Arbitration Rules .....</b>	<b>14</b>
<b>10.</b>	<b>Review of ICSID Awards .....</b>	<b>15</b>
<b>11.</b>	<b>Binding Nature and Enforcement of ICSID Awards .....</b>	<b>18</b>
<b>12.</b>	<b>Summary and Conclusion.....</b>	<b>21</b>

## 1. Introduction

Counsel for Webuild S.p.A. (“Webuild”) have asked me for a legal opinion on the nature of arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention” or “Convention”).<sup>1</sup>

I am a former Professor of International Law at the University of Vienna. During the last 30 years, I have specialized in the field of international investment law, in particular arbitration under the ICSID Convention. I have authored several books and numerous articles in that field. Specifically, I have authored and edited *The ICSID Convention: A Commentary*, now in its third edition.<sup>2</sup> I have also served as arbitrator and expert witness in numerous ICSID and non-ICSID arbitrations. A short Statement of Qualifications is attached to this Opinion.

I understand that in an ICSID arbitration case pursuant to the Bilateral Investment Treaty between Italy and Panama (“BIT”), Webuild has filed an application for discovery under 28 U.S.C. § 1782 in the Southern District of New York, through which it seeks to obtain documents.

Section 1782 authorizes a district court to order testimony or the production of evidence “for use in a proceeding in a foreign or international tribunal[.]”

Section 1782(a) provides:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.

In *ZF Automotive US Inc v. Luxshare Ltd.*,<sup>3</sup> the U.S. Supreme Court has clarified the meaning of “a foreign or international tribunal” for purposes of §1782. It held that to qualify, an arbitral panel must be an adjudicative body that exercises governmental

---

<sup>1</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 (“ICSID Convention”).

<sup>2</sup> *Schreuer’s Commentary on the ICSID Convention* (3<sup>rd</sup> ed. 2022, S. Schill *et al* eds.).

<sup>3</sup> *ZF Automotive US Inc. v. Luxshare Ltd.*, No. 21-401, 2022 WL 2111355 (U.S. Jun. 13, 2022).

authority.<sup>4</sup> Under the Supreme Court’s interpretation, a tribunal is “international” when it involves or is of two or more nations, meaning that those nations have conferred upon the tribunal official power to adjudicate disputes.<sup>5</sup> An “international tribunal” is a tribunal imbued with governmental authority by multiple nations.<sup>6</sup> The Supreme Court summarized its finding as follows:

In sum, we hold that § 1782 requires a ‘foreign or international tribunal’ to be governmental or intergovernmental. Thus, a ‘foreign tribunal’ is one that exercises governmental authority conferred by a single nation, and an ‘international tribunal’ is one that exercises governmental authority conferred by two or more nations. Private adjudicatory bodies do not fall within § 1782.<sup>7</sup>

As I will show below, an arbitration tribunal constituted under the ICSID Convention exercises governmental authority conferred by multiple nations. This conclusion follows from:

- The origin and nature of ICSID arbitration pursuant to a multilateral treaty;
- The role of sovereign States in the creation, administration, and governance of ICSID;
- The financing of ICSID by the States Parties to the Convention (“Member States”);
- The legal personality and legal immunities enjoyed by ICSID as an international organization;
- The designation and appointment of arbitrators to ICSID tribunals by the Member States;
- The screening of requests for arbitration by ICSID;
- The jurisdiction of ICSID;
- The applicability of arbitration rules adopted by a body composed of State representatives;
- The self-contained review procedure within the ICSID system; and

---

<sup>4</sup> *Id.* at slip op. 11.

<sup>5</sup> *Id.* at slip op. 8-9.

<sup>6</sup> *Id.* at slip op. 8-11.

<sup>7</sup> *Id.* at slip op. 11.

- The binding force and enforceability of awards in all Member States, which are bound to treat an ICSID award as if it were a final judgment of a court in that State.

## 2. Origin and Nature of the ICSID Convention

The ICSID Convention was adopted on March 18, 1965, in Washington and entered into force on October 14, 1966. It is a multilateral treaty that has been ratified by 157 States, including the United States, Italy, and Panama.<sup>8</sup>

The ICSID Convention's drafting took place from June 1962 to March 1965 under the auspices of the International Bank for Reconstruction and Development (the "World Bank"), an intergovernmental organization. The bulk of the drafting was performed in regional consultative meetings of government-appointed legal experts. A Legal Committee consisting of government experts deliberated over a draft, which was then considered by the World Bank's Executive Directors, who represent the Member governments of the World Bank. The Legal Committee independently considered and commented on each proposed provision of the Convention. Following the deliberations, the Executive Directors adopted a resolution approving the final text of the Convention. The President of the World Bank was instructed to transmit the text of the Convention to all Member governments of the World Bank for signature and ratification.<sup>9</sup> The drafting of the ICSID Convention is fully documented in *travaux préparatoires* published as *History of the ICSID Convention*.<sup>10</sup>

The object and purpose of the ICSID Convention, as expressed in its Preamble, is to promote economic development through the creation of a safe and favourable investment

---

<sup>8</sup> Database of ICSID Member States, ICSID, available at <https://icsid.worldbank.org/about/member-states/database-of-member-states>.

<sup>9</sup> For a detailed description of the ICSID Convention's drafting, see Antonio R. Parra, *The History of ICSID* (2d ed. 2017).

<sup>10</sup> History of the ICSID Convention (*Travaux Préparatoires*) (1970), vols. I and II, available at <https://icsid.worldbank.org/resources/publications> ("History of the ICSID Convention").

climate.<sup>11</sup> It provides a procedural framework for arbitration and conciliation in investment disputes between States and foreign investors.

The ICSID Convention created a permanent intergovernmental institution, the International Centre for Settlement of Investment Disputes (“ICSID” or “the Centre”).

The provisions of the ICSID Convention are complemented by rules and regulations, including the ICSID Rules of Procedure for Arbitration Proceedings (“Arbitration Rules”) and the Financial and Administrative Regulations, which are adopted by the ICSID Administrative Council.<sup>12</sup> As explained below, the ICSID Administrative Council, which is the governing body of ICSID, is composed of representatives of all Member States.<sup>13</sup>

It follows that ICSID was created by a treaty under public international law as a permanent institution that serves a public purpose common to the States participating in it.

### **3. The Organization of ICSID**

ICSID has two main organs, the Administrative Council and the Secretary-General. The Administrative Council is composed of one representative of each Member State, including Italy and Panama.<sup>14</sup> Each Member State has one seat and one vote.<sup>15</sup> The President of the World Bank acts as Chairman of the Administrative Council.<sup>16</sup> As noted above, the Administrative Council adopts the rules and regulations governing ICSID’s

---

<sup>11</sup> ICSID Convention, Preamble (“Considering the need for international cooperation for economic development, and the role of private international investment therein[.]”).

<sup>12</sup> ICSID Convention, Introduction (“The provisions of the ICSID Convention are complemented by Regulations and Rules adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a)–(c) of the Convention (the ICSID Regulations and Rules).”).

<sup>13</sup> ICSID Convention, arts. 4, 7; *see also* § 3, *infra*.

<sup>14</sup> ICSID Convention, art. 4(1) (“The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal’s absence from a meeting or inability to act.”).

<sup>15</sup> ICSID Convention, art. 7(2) (“Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.”).

<sup>16</sup> ICSID Convention, art. 5 (“The President of the Bank shall be *ex officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.”).

activities. In particular, it adopts the rules and regulations governing arbitration, conciliation and fact-finding proceedings.<sup>17</sup> It also adopts the annual budget of revenues and expenditures.<sup>18</sup>

The Secretary-General and Deputy Secretary-Generals are elected by the Administrative Council.<sup>19</sup> The Secretary-General is the Centre's legal representative and principal officer and is responsible for its administration, including the appointment of staff under rules adopted by the Administrative Council.<sup>20</sup> The Secretary-General performs the function of registrar, and has the power to authenticate arbitral awards rendered under the ICSID Convention and to certify copies of awards.<sup>21</sup>

Therefore, ICSID is governed by a body composed of representatives of the Member States participating in and implementing the ICSID Convention. It is administered by a Secretary-General who is elected by that intergovernmental body.

---

<sup>17</sup> ICSID Convention, art. 6(1) ("Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:

- (a) adopt the administrative and financial regulations of the Centre;
- (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
- (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);
- (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
- (e) determine the conditions of service of the Secretary-General and of the Deputy Secretary-General;
- (f) adopt the annual budget of revenues and expenditures of the Centre;
- (g) approve the annual report on the operation of the Centre.")

<sup>18</sup> *Id.*

<sup>19</sup> ICSID Convention, art. 10(1) ("The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.").

<sup>20</sup> ICSID Convention, art. 11 ("The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.").

<sup>21</sup> *Id.*

#### **4. Financing of ICSID's Activities**

The expenditures of the Centre, to the extent that they are not met by other income, are to be borne by the States participating in the ICSID Convention.<sup>22</sup> Other income is derived from the charges to parties to particular proceedings.<sup>23</sup> Under an Administrative Agreement between ICSID and the World Bank, the latter bears the cost of ICSID's staff as well as its administrative costs.<sup>24</sup> Therefore, despite charges to the users of ICSID's facilities, it is a publicly financed institution subject to the oversight of the Member States through the Administrative Council, which adopts the rules and regulations governing ICSID's operations.

#### **5. Legal Personality and Immunities of ICSID**

ICSID enjoys full international legal personality. It has the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.<sup>25</sup> This enables the Centre to act as a legal person under domestic law. ICSID is an autonomous international institution distinct from the World Bank.

In addition to international legal personality, ICSID enjoys far-reaching international privileges and immunities<sup>26</sup> comparable to those of other international institutions. The

---

<sup>22</sup> ICSID Convention, art. 17 (“If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.”).

<sup>23</sup> See ICSID Administrative and Financial Regulations, Chapter III, available at <http://icsidfiles.worldbank.org/icsid/icsid/staticfiles/basicdoc/basic-en.htm>.

<sup>24</sup> Memorandum of Administrative Arrangements Agreed between the International Bank for Reconstruction and Development and the International Centre for Settlement of Investment Disputes, Feb. 13, 1967, ICSID First Annual Report 1966/1967 (1967), at 15-16, available at <https://icsid.worldbank.org/resources/publications/icsid-annual-report>.

<sup>25</sup> ICSID Convention, art. 18 (“The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

(a) to contract;  
(b) to acquire and dispose of movable and immovable property;  
(c) to institute legal proceedings.”).

<sup>26</sup> ICSID Convention, art. 19 (“To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.”).



Centre, its property, and assets enjoy absolute immunity from all legal process, except when the Centre waives this immunity.<sup>27</sup> The members of the Administrative Council, including its Chairman, as well as the Secretariat's officers and employees, enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except where the Centre waives this immunity. The same applies to persons acting as arbitrators and conciliators.<sup>28</sup> The Centre's archives are inviolable, and its official communications are accorded by all participating States treatment not less favourable than that accorded to other international organizations.<sup>29</sup> In addition, the Centre is exempt from all taxation and customs duties.<sup>30</sup> ICSID arbitrators and

---

<sup>27</sup> ICSID Convention, art. 20 (“The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.”). The explanatory comment accompanying the preliminary draft of the Convention notes that these provisions regarding ICSID’s privileges and immunities were based upon similar provisions protecting the World Bank as an international institution, “except that the Center has been given full immunity from legal process, whereas the Bank in view of the nature of its dealings with capital markets, enjoys only limited immunity in that respect.” *See* Preliminary Draft of the ICSID Convention (Working Paper for Consultative Meetings of Legal Experts Designated by Governments), Oct. 15, 1963, *reprinted in* History of the ICSID Convention, vol. II-1, at 200. Granting ICSID such immunity was viewed as “desirable to ensure the proper functioning of proceedings under the auspices of the Center.” *Id.*

<sup>28</sup> ICSID Convention, art. 21 (“The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat:  
(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;  
(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.”).

These broad immunities closely resemble those contained in the statutes of established international tribunals, such as the International Court of Justice and the International Criminal Court. *See* Gary Born, Chapter 13: Rights and Duties of International Arbitrators, *in* International Commercial Arbitration 2177 n.442 (3d ed. 2021) (citing Art. 19 of the Statute of the International Court of Justice, Art. 10 of the Statute of the International Tribunal for the Law of the Sea, Art. 48 of the Rome Statute of the International Criminal Court, and Art. 13 of the Updated Statute of the International Criminal Tribunal for the Former Yugoslavia as examples of immunities provisions similar to those of the ICSID Convention).

<sup>29</sup> ICSID Convention, art. 23 (“(1) The archives of the Centre shall be inviolable, wherever they may be.  
(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.”).

<sup>30</sup> ICSID Convention, art. 24(1) (“The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.”).

conciliators are also exempt from taxation on their fees and expense allowances under certain precisely defined circumstances.<sup>31</sup>

Therefore, ICSID is an organization under public international law with legal personality. It enjoys the typical privileges and immunities of an international organization under public international law.

## **6. The Designation and Appointment of Arbitrators**

ICSID keeps an official Panel of Arbitrators and a Panel of Conciliators.<sup>32</sup> The Member States have the right to designate persons to these Panels. Each State may designate four persons to each Panel.<sup>33</sup> The Chairman of the Administrative Council may designate another ten persons.<sup>34</sup> Panel members serve for renewable periods of six years.<sup>35</sup> The persons designated to the Panels “shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgement.”<sup>36</sup>

Most ICSID tribunals consist of three arbitrators. After filing a request for arbitration, the investor and the host State generally each appoint one arbitrator, and the two arbitrators or the two parties together then agree on the appointment of the president of the tribunal.<sup>37</sup> In

---

<sup>31</sup> ICSID Convention, art. 24(3) (“No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.”).

<sup>32</sup> ICSID Convention, art. 3 (“The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.”).

<sup>33</sup> ICSID Convention, art. 13(1) (“Each Contracting State may designate to each Panel four persons who may but need not be its nationals.”).

<sup>34</sup> ICSID Convention, art. 13(2) (“The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.”).

<sup>35</sup> ICSID Convention, art. 15(1) (“Panel members shall serve for renewable periods of six years.”).

<sup>36</sup> ICSID Convention, art. 14(1) (“Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.”).

<sup>37</sup> ICSID Convention, art. 37(2) (“(a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.”).

the absence of agreement, the Chairman of the Administrative Council appoints the president from the Panel of Arbitrators.<sup>38</sup> The Chairman also appoints any arbitrators that may not have been appointed by the parties after 90 days of the registration of the request for arbitration.<sup>39</sup> The Chairman of the Administrative Council makes these appointments from the Panel of Arbitrators.<sup>40</sup>

The parties, when making appointments to arbitral tribunals, are not limited to the Panel of Arbitrators.<sup>41</sup> In many cases, however, the parties choose arbitrators from the Panel of Arbitrators. Because in every case the State that is a party to the proceedings may appoint an arbitrator, it follows that a high proportion of arbitrators in ICSID proceedings are either designated by States or are appointed by States.

The only method to challenge an ICSID award is for a party to apply for its annulment (see § 10 below).<sup>42</sup> An annulment committee (called an *ad hoc* committee) composed of three members decides on an application for annulment. The members of an annulment committee must all be appointed by the Chairman of the Administrative Council from the Panel of Arbitrators.<sup>43</sup> It follows that the annulment of ICSID awards, *i.e.*, the oversight over such awards, is exclusively in the hands of persons who have been designated by participating States or by the Chairman of the Administrative Council.

---

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.”).

<sup>38</sup> ICSID Convention, art. 38 (“If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.”).

<sup>39</sup> *Id.*

<sup>40</sup> ICSID Convention, art. 40(1) (“Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.”).

<sup>41</sup> ICSID Convention, arts. 37, 38, 40.

<sup>42</sup> ICSID Convention, art. 52; *see also* Kateryna Bondar, *Annulment of ICSID and Non-ICSID Investment Awards: Differences in the Extent of Review*, 32 J. Int’l Arb 621, 624 (2015) (“National courts do not have authority to review ICSID awards . . . annulment was designed as a limited and extraordinary remedy[.]”).

<sup>43</sup> ICSID Convention, art. 52(3) (“On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons.”).

Therefore, the Member States, through designations of persons to the Panel of Arbitrators and through the appointment of arbitrators in particular cases, enjoy a strong influence on the composition of ICSID arbitral tribunals and annulment committees.

### **7. The Screening of Requests for Arbitration**

In ICSID proceedings, the commencement of arbitration is subject to a screening procedure. A request for arbitration must be submitted to ICSID's Secretary-General who, as mentioned above, is elected by the Administrative Council, a body composed of Member State representatives. The request for arbitration must contain information concerning the dispute, the parties, and the jurisdictional requirements, including the basis of consent.<sup>44</sup> The Secretary-General will examine the request for arbitration and will refuse to register it if she finds that the dispute is manifestly outside the Centre's jurisdiction.<sup>45</sup>

If the Secretary-General finds that the dispute is not manifestly outside the Centre's jurisdiction, she will register the request.<sup>46</sup> Registration is often preceded by correspondence with both parties and a call by ICSID for further clarifications. Once the request is registered, the Secretary-General will notify the parties in writing.<sup>47</sup> A decision by the Secretary-General not to register a request for arbitration is final and not subject to any form of review.

Therefore, the institution of ICSID arbitration proceedings is subject to a screening process by the Secretary-General, an officer elected by a body composed of Member State representatives.

---

<sup>44</sup> ICSID Convention, art. 36(2) ("The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings."); *see also* Institution Rule 2 (describing the required contents of the request for arbitration or conciliation).

<sup>45</sup> ICSID Convention, art. 36(3) ("The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.").

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

## 8. Jurisdiction of an ICSID Tribunal

An ICSID tribunal will have jurisdiction only if the host State to the investment and the investor's home State are both Contracting Parties to the ICSID Convention.<sup>48</sup> To establish jurisdiction, participation in the ICSID Convention of the host State to the investment and of the investor's home State is, however, not enough. In addition, the parties to a dispute—the host State and the investor—must give their consent to ICSID arbitration. Consent to ICSID arbitration by the host State and by the investor is an indispensable requirement for an ICSID tribunal's jurisdiction.<sup>49</sup> The most frequently used method to give consent to ICSID arbitration is through a treaty between the host State and the investor's State of nationality or home State. Most BITs contain clauses offering consent to arbitration to the nationals of one State party to the treaty against the other State party to the treaty. Some regional multilateral treaties employ the same method. The investor may perfect these offers of consent contained in treaties through their acceptance. In the present case, consent was offered by Panama and accepted by an investor of Italian nationality—now incorporated as Webuild—through the BIT between Italy and Panama.<sup>50</sup>

Another technique to give specific consent to an ICSID arbitration is a provision in the national legislation of the host State. Such a provision offers consent to arbitration to foreign investors in general terms. Many capital-importing countries have adopted such legislative provisions. The investor may accept the offer in writing at any time while the legislation is in effect. The acceptance may also be made simply by instituting proceedings. A direct agreement between the host State and the foreign investor, such as a

---

<sup>48</sup> ICSID Convention, art. 25(1) (“The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.”).

<sup>49</sup> *Id.*; see also Chapter 28: Arbitration of Investment Disputes, in *Comparative International Commercial Arbitration 777* (Lew, Mistelis & Kroll eds. 2003) (describing the two expressions of consent required to initiate an ICSID arbitration).

<sup>50</sup> Agreement Between The Government Of The Italian Republic And The Government Of The Republic Of Panama On The Promotion And Protection Of Investments, art. IX, Oct. 12, 2010 (entry into force).

concession, may also contain a consent clause, which expresses the host State's offer of consent and the investor's acceptance thereof.

In addition, as a jurisdictional requirement, the ICSID Convention requires the existence of a legal dispute arising directly out of an investment between a State and a foreign investor.<sup>51</sup> Disputes of this nature typically are the consequence of action by the host State's government and other authorities. The juxtaposition of a host State and a foreign investor inevitably involves governmental action that the investor argues is contrary to the State's international obligations.

Under traditional international law, situations of alleged wrongdoing of a State against a foreigner would typically lead to the espousal by the investor's home State of the investor's claims and its presentation by way of diplomatic protection. This method leads to a dispute between the two States. One of the purposes of the ICSID Convention is that investment disputes become "depoliticised," while still subject to oversight by the ICSID Member States. This means that ICSID arbitration removes the dispute from the foreign policy agenda of the investor's home State, thereby avoiding political confrontation between home State and host State.<sup>52</sup> In other words, the dispute is moved from the political inter-State arena into the judicial arena of ICSID arbitration. A potentially dangerous political dispute between two nations is thus converted into a judicial dispute.

Therefore, the jurisdiction of an arbitration tribunal under the ICSID Convention is subject to separate expressions of consent by the State party to the dispute. The State's

---

<sup>51</sup> ICSID Convention, art. 25(1).

<sup>52</sup> See Ibrahim Shihata, *Towards a Greater Depoliticization of Investment Disputes: the Roles of ICSID and MIGA*, 1 ICSID Rev. - Foreign Inv. L.J. 1, 4 (1986). The *travaux préparatoires* to the ICSID Convention explicitly mention this goal. See Summary Record of Consultative Meeting of Legal Experts Held in Addis Ababa, Apr. 30, 1964, reprinted in History of the ICSID Convention, vol. II-1, at 242 ("The Convention would [] offer a means of settling directly, on the legal plane, investment disputes between the State and the foreign investor and insulate such disputes from the realm of politics and diplomacy."); Note by A. Broches, General Counsel, transmitted to the Executive Directors: Settlement of Disputes Between Governments and Private Parties, Aug. 28, 1961, reprinted in History of the ICSID Convention, vol. II-1, at 1-2 (explaining that the ICSID Convention was intended to remove the "political element" from investment disputes, and to instead submit them to an "impartial tribunal"). See also Christoph Schreuer, *Investment Protection and International Relations*, in The Law of International Relations: Liber Amicorum Hanspeter Neuhold 345 (Reinisch & Kriebaum eds. 2007); Ursula Kriebaum, *Evaluating Social Benefits and Costs of Investment Treaties: Depoliticization of Investment Disputes* 33 ICSID Rev. - Foreign Inv. L.J. 1, 14-28 (2018); *Ecuador v United States*, PCA Case No. 2012-5, Award, Sept. 29, 2012, ¶ 201.

expression of consent is made most frequently through a treaty or through national legislation, after the State has become a Contracting Party to the ICSID Convention. The focus on investment disputes between the host State and the foreign investor means that the origin of the dispute lies most often in governmental acts affecting the investment.

### 9. The ICSID Arbitration Rules

Unlike commercial or *ad hoc* arbitration, ICSID arbitration takes place under Arbitration Rules adopted by a body composed of government representatives. In particular, ICSID's Institution Rules and Arbitration Rules are adopted by ICSID's Administrative Council<sup>53</sup> which, as described above, is composed of representatives of all Member States.<sup>54</sup>

The Arbitration Rules applicable in the present case were adopted by ICSID's Administrative Council and entered into effect on April 10, 2006. The Administrative Council has recently adopted new Regulations and Arbitration Rules, which came into effect on July 1, 2022, and will be applicable to new cases to which the parties consent after that date.<sup>55</sup> The ICSID Convention provides that any arbitration proceeding shall be conducted, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration.<sup>56</sup>

---

<sup>53</sup> ICSID Convention, art. 6(1) (“Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:  
(a) adopt the administrative and financial regulations of the Centre;  
(b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;  
(c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules) . . .”).

<sup>54</sup> ICSID Convention, art. 4(1); *see also supra*, § 3.

<sup>55</sup> The new ICSID Arbitration Rules adopted in 2022 were drafted following an extensive process commenced in 2016, which involved proposals for amendments to the rules submitted by Member States, several working papers drafted by the Secretariat and commented on by Member States, and the final approval of the new Rules by the Member States through a vote of the Administrative Council on March 21, 2022. *See* ICSID Rules and Regulations Amendment, ICSID Resources, *available at* <https://icsid.worldbank.org/resources/rules-amendments>

<sup>56</sup> ICSID Convention, art. 44 (“Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.”).

Therefore, ICSID arbitration takes place under arbitration rules adopted by an intergovernmental body.

### 10. Review of ICSID Awards

The ICSID Convention provides for its own self-contained system of review for ICSID awards and does not permit any external review by domestic courts.<sup>57</sup> The self-contained and exhaustive nature of review procedures under the ICSID Convention is one of the Convention's distinctive features.<sup>58</sup> It serves the interest of finality of awards and distinguishes it from other types of arbitration. Awards stemming from arbitration systems governing commercial arbitration and *ad hoc* arbitration are subject to review procedures by domestic courts. These review procedures, governing the recognition and enforcement of non-ICSID arbitral awards, are foreseen in national laws and in other conventions, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").<sup>59</sup>

The UNCITRAL Model Law on International Commercial Arbitration of 1985 foresees several grounds for the setting aside or non-recognition of an international commercial arbitral award by a domestic court.<sup>60</sup> In many countries, national arbitration laws include rules on the setting aside of arbitral awards that are modelled on the UNCITRAL Model Law.<sup>61</sup>

---

<sup>57</sup> ICSID Convention, arts 50-52.

<sup>58</sup> See Bondar, *Annulment of ICSID and Non-ICSID Investment Awards*, *supra* note 42, at 628 ("ICSID annulment is a 'drastic' or 'radical' remedy in that the decision to annul in full invalidates the award completely . . . The decision of the committee is not subject to appeal, and in the event of annulment, the only redress is to resubmit the dispute to another tribunal").

<sup>59</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958, 330 U.N.T.S. 38.

<sup>60</sup> UNCITRAL Model Law arts. 34, 36, Dec. 11, 1985, 24 ILM 1302, 1311-1313.

<sup>61</sup> See, e.g., Australian International Arbitration Act of 1974, available at <https://www.legislation.gov.au/Details/C2018C00439>; Swiss Private International Law Act of 1987, available at [https://www.fedlex.admin.ch/eli/cc/1988/1776\\_1776\\_1776/en](https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en); German Arbitration Act of 1998, available at [https://www.gesetze-im-internet.de/englisch\\_zpo/englisch\\_zpo.html](https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html).



By contrast, ICSID awards are not subject to these possibilities for review. ICSID awards are not subject to setting aside or to any other form of scrutiny by domestic courts.<sup>62</sup> Under the ICSID Convention, a domestic court or authority, before which recognition and enforcement are sought, is restricted to ascertaining the award's authenticity.<sup>63</sup> It may not re-examine the ICSID tribunal's jurisdiction. It may not re-examine the award on the merits. Nor may it examine the fairness and propriety of the proceedings before the ICSID tribunal.<sup>64</sup> An ICSID award is *res judicata* both as regards the decision on jurisdiction and the decision on the merits.

In the words of the United Kingdom Supreme Court:

It is a notable feature of the scheme of the ICSID Convention that once the authenticity of an award is established, a domestic court before which recognition is sought may not re-examine the award on its merits. Similarly, a domestic court may not refuse to enforce an authenticated ICSID award on grounds of national or international public policy. In this respect, the ICSID Convention differs significantly from the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.<sup>65</sup>

---

<sup>62</sup> ICSID Convention, Art. 53(1) (“The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.”). *See also Pey Casado et al. v. Republic of Chile*, ICSID Case No. ARB/98/2, Second Decision on Annulment, Mar. 15, 2018, at ¶ 40 (recognizing that under the ICSID Convention, “an award is ‘binding’ on the parties and is not subject to any appeal or to any other remedy except those provided for in the Convention”).

<sup>63</sup> *See OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Decision on the Application for Annulment, Dec. 6, 2018, at ¶ 58 (“[T]he permissible challenges to an ICSID award must be brought within the framework of the Convention, and pursuant to its terms. The procedure for the annulment of an award rendered under the ICSID Convention is self-contained, and autonomous from domestic law.”).

<sup>64</sup> *See Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F3d 96, 102 (2d Cir. 2017) (“Member states’ courts are thus not permitted to examine an [ICSID] award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under the terms of the [ICSID Convention], they may do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award.”); *see also OI European Grp. B.V. v. Bolivarian Republic of Venezuela*, No. 16-1533 (ABJ), 2019 U.S. Dist. LEXIS 85128, at \*12 (D.D.C. May 21, 2019) (same).

<sup>65</sup> *Micula and others v. Romania*, [2020] UKSC 5, Judgment, Feb. 19, 2020, ¶ 68. In the case of *Compañía de Concesiones de Infraestructura*, an Argentinian Court of Appeals likewise acknowledged this crucial distinction between ICSID and non-ICSID awards, concluding that Argentinian courts could not submit ICSID awards to exequatur proceedings because, “having [] adhered to [the ICSID] convention, [Argentina] waived the exequatur proceeding for the recognition and enforcement of awards rendered by an arbitration tribunal constituted under the ICSID Convention.” *CCI - Compañía de Concesiones de Infraestructura S.A. s/ Pedido*

In the United States, the legislation implementing the ICSID Convention, 22 U.S. Code § 1650a(a), provides that the Federal Arbitration Act (9 U.S.C. 1 *et seq.*), with its several substantive grounds for vacating awards, “shall not apply to enforcement of awards rendered pursuant to the [ICSID] [C]onvention.” The Second Circuit has thus held:

The [Federal Arbitration Act] prescribes grounds for vacating an arbitral award where the award was tainted by, among other things, fraud, corruption, or misconduct by the arbitrator. *See* 9 U.S.C. § 10. By expressly precluding the FAA’s application to enforcement of ICSID Convention awards, Congress intended to make these grounds of attack unavailable to ICSID award-debtors in federal court enforcement proceedings. *See* 112 Cong. Rec. 13148, 13149 (daily ed. June 15, 1966) (written statement of Sen. Fulbright) (conveying that substantive attack to ICSID awards on grounds provided by FAA can be made ‘only through the annulment proceedings provided for in the Convention,’ not in federal court).<sup>66</sup>

The ICSID Convention offers its own self-contained system for review.<sup>67</sup> Under this procedure, an annulment committee (called an *ad hoc* committee) may annul the award upon the request of a party within 120 days of the issuance of the award.<sup>68</sup> The annulment committee consists of three persons, appointed by the Chairman of ICSID’s Administrative Council.<sup>69</sup> The Chairman in making these appointments is restricted to ICSID’s Panel of Arbitrators, which is composed of persons appointed by the Member States and by the Chairman.<sup>70</sup> Therefore, the Member States ultimately control the composition of the body that makes the decision on annulment, the only review possible of an award under the ICSID Convention.

Annulment under the ICSID Convention is concerned only with the legitimacy of the process of decision, but not with its substantive correctness. The grounds for annulment

---

*de Quiebra (por República de Perú)*, Case 8030/2015, Buenos Aires Commercial Court of Appeals (Chamber A), Decision of August 18, 2015, at ¶ 5.

<sup>66</sup> *Mobil Cerro Negro*, 863 F3d at 120-21.

<sup>67</sup> ICSID Convention, art. 52.

<sup>68</sup> ICSID Convention, Art. 52(2) (“The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.”).

<sup>69</sup> ICSID Convention, art. 52(3).

<sup>70</sup> ICSID Convention, art. 13.

are listed exhaustively in the ICSID Convention and annulment is restricted to these grounds.<sup>71</sup>

A decision by an annulment committee upholding a request for annulment invalidates the original award, but it does not replace it with a new decision on the merits. Under the ICSID Convention, if the award is annulled, the dispute can be submitted to a new tribunal at the request of either party.<sup>72</sup>

Therefore, unlike awards in commercial arbitration and in *ad hoc* arbitration, ICSID awards are not subject to the scrutiny of domestic courts. Rather, ICSID has its own self-contained system of annulment.

### **11. Binding Nature and Enforcement of ICSID Awards**

Arbitral awards are binding upon the parties and create the obligation to comply with them. The ICSID Convention specifically provides for the binding nature and finality of ICSID awards. The ICSID Convention also explicitly excludes an appeal or any other remedy against an ICSID award outside the framework of the Convention.<sup>73</sup>

The regime for the enforcement of ICSID awards differs fundamentally from commercial arbitration and *ad hoc* arbitration. The enforcement of non-ICSID awards is subject to the national law of the place of enforcement and to the New York Convention.<sup>74</sup> The New York Convention does not give the same degree of enforceability as the ICSID Convention. Article V of the New York Convention lists several reasons upon which

---

<sup>71</sup> ICSID Convention, art. 52(1) (“Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(a) that the Tribunal was not properly constituted;  
(b) that the Tribunal has manifestly exceeded its powers;  
(c) that there was corruption on the part of a member of the Tribunal;  
(d) that there has been a serious departure from a fundamental rule of procedure; or  
(e) that the award has failed to state the reasons on which it is based.”).

<sup>72</sup> ICSID Convention, art. 52(6) (“If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.”).

<sup>73</sup> ICSID Convention, art. 53.

<sup>74</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958, 330 U.N.T.S. 38.

recognition and enforcement of an award may be refused and, in many jurisdictions, set aside under the UNCITRAL Model Law.

The regime for the enforcement of ICSID awards is different.<sup>75</sup> Under the ICSID Convention, all States parties to the Convention are to recognize awards as binding and enforce their pecuniary obligations like final domestic judgments.<sup>76</sup> Therefore, through Article 54(1) of the ICSID Convention, all Member States have assumed the obligation to participate in the implementation of ICSID awards.<sup>77</sup>

The purpose of Article 54(1) is to stress the finality of ICSID awards.<sup>78</sup> The reference in Article 54(1) to a “final judgment of a court in that State” means that the judgment is non-reviewable under domestic law, and that ICSID tribunals are to be treated as analogous to national courts of the Member States.

In the words of Aron Broches, the then-general counsel of the World Bank who oversaw the drafting of the ICSID Convention:

The language [of Article 54(1)] leaves no doubt that it obliges Contracting States to give effect in the municipal legal order to the binding force of an award decreed by Art. 53 and to do so whether or not they or any of their nationals were parties to the dispute. Contracting States have two obligations: to recognize an award as binding and to enforce the pecuniary

---

<sup>75</sup> See *Mobil Cerro Negro*, 863 F3d at 117 (observing that the legislative history of the statute implementing the ICSID Convention in the United States “suggests that [the enforcement provisions of the Convention were] intended to immunize ICSID awards from substantive assault outside the ICSID tribunal”).

<sup>76</sup> ICSID Convention, art. 54(1) (“Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.”).

<sup>77</sup> See *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, Nov. 20, 2012, at ¶ 3.50 (“As Article 54 of the ICSID Convention makes clear, the Tribunal notes that an ICSID award is final and non-reviewable by an enforcing court, as if it were a final judgment of a court in that State. It is not permissible for that court, under the ICSID Convention, to refuse enforcement on the ground of public policy or non-compliance with any national or international law.”).

<sup>78</sup> See Summary Record of Consultative Meeting of Legal Experts Held in Geneva, Jun. 1, 1964, *reprinted in* History of the ICSID Convention, vol II-1, at 424 (noting that Aron Broches, the then-general counsel of the World Bank, “felt that it was essential in order to obtain the widest possible acceptance of this Convention, particularly by the developing countries, to ensure that, a winning State, could obtain satisfaction of the rights conferred by the award wherever the investor’s property was located without being subject to undue delays and being met by defenses based on local laws”).

obligations imposed by it. The award is equated to a final court decision for both purposes. A final court decision means a decision against which no ordinary remedies are available.<sup>79</sup>

Article 54 of the ICSID Convention imposes a general duty on all Member States to recognize and enforce ICSID awards. That duty applies not only to the State party to the proceedings and to the State whose national was a party to the proceedings, but to all Member States. All States parties to the ICSID Convention have not merely a right to demand compliance with an award but also a duty to cooperate in its enforcement.<sup>80</sup> The obligation to give assistance in the enforcement of ICSID awards is limited only by the duty to respect the immunity of certain types of State property.<sup>81</sup> The collective responsibility of all States parties to the ICSID Convention for the compliance with ICSID awards goes beyond a mere right to demand observance with the obligations flowing from awards. It includes a positive obligation to enforce pecuniary obligations under these awards.

The legislation implementing the ICSID Convention in the United States, 22 U.S. Code § 1650a(a), notably provides that an award rendered pursuant to the ICSID Convention “shall create a right arising under a treaty of the United States[,]” and that “[t]he pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.”<sup>82</sup>

---

<sup>79</sup> Aron Broches, *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965: Explanatory Notes and Survey of its Application*, 18 Yearbook Com. Arb. 627, 701 (1993).

<sup>80</sup> See *Mobil Cerro Negro*, 863 F.3d at 100-02, 104-05; *Liberian Eastern Timber Corp. v. Government of Republic of Liberia*, 650 F. Supp. 73, 76-77 (S.D.N.Y. 1986); *Blue Ridge Invs., LLC v. Republic of Argentina*, 902 F. Supp. 2d 367, 373-75 (S.D.N.Y. 2012), *aff’d in relevant part*, 735 F.3d 72 (2d. Cir. 2013).

<sup>81</sup> ICSID Convention, art. 55 (“Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.”); see also *Liberian Eastern Timber Corp.*, 650 F. Supp. at 76-77; *Mobil Cerro Negro*, 863 F.3d at 112-16, 124.

<sup>82</sup> 22 U.S. Code § 1650a(a); see also 112 Cong. Rec. S 13149 (1966) (noting that the statute implementing the ICSID Convention was intended to require U.S. district courts to “give full faith and credit to an [ICSID] award as if it were a final judgment of a court of one of the several States[,]” which “means that an action would have to be brought on the award in a United States District court just as an action would have to be brought in a United States District court to enforce the final judgment of a State court[,]” and that “[i]n such an enforcement action the United States District court would be required to give full faith and credit to the arbitral award”). As Under Secretary of the Treasury Joseph W. Barr stated in his testimony regarding the implementing legislation before the Senate Foreign Relations Committee, “arbitral awards will be enforceable

Therefore, recognition and enforcement of an award may be sought in any State party to the ICSID Convention, including but not limited to the State party to the arbitration proceedings and the State of nationality of the investor who was a party to the proceedings.

The duty to comply with an award and the duty to recognize and enforce an award are obligations that operate vis-à-vis the entire membership of the ICSID Convention. Non-compliance with an award and failure to enforce an award have legal consequences not only in relation to the award creditor and its State of nationality.

Therefore, ICSID awards are to be recognized and enforced in all participating States like final domestic judgments.

## **12. Summary and Conclusion**

Section 1782 refers to “a proceeding in a foreign or international tribunal[.]” The Supreme Court has determined that this term refers to a governmental or intergovernmental adjudicative body that exercises governmental authority. It does not refer to private commercial arbitration or ordinary *ad hoc* arbitration.

An ICSID tribunal meets the description of an intergovernmental adjudicative body that exercises governmental authority for the following reasons:

ICSID was created by Member States through a treaty under public international law as a permanent institution that serves a public purpose common to the States participating in it.

ICSID is governed by a body composed of representatives of the States participating in the ICSID Convention. It is administered by a Secretary-General, who is elected by that intergovernmental body.

ICSID is a publicly funded international institution.

---

[*sic*] in the courts of contracting states. In the case of federal states like the United States the convention provides that awards may be enforced in or through the Federal courts. We have drafted proposed implementing legislation which will provide that arbitral awards under the convention shall be enforceable [*sic*] in U.S. Federal district courts.” 112 Cong. Rec. S 13149 (1966).

ICSID is an organization under public international law with legal personality. It enjoys the typical privileges and immunities of an international organization under public international law.

The participating States, through designations of persons to the Panel of Arbitrators and through the appointment of arbitrators in particular cases, enjoy a strong influence on the composition of ICSID arbitral tribunals and annulment committees.

The institution of ICSID arbitration proceedings is subject to a screening process by the Secretary-General, an officer elected by a body composed of State representatives.

The jurisdiction of an arbitration tribunal under the ICSID Convention is subject to two separate expressions of consent by the State party to the dispute. The first expression of consent is made through the ratification of the ICSID Convention, and the second expression of consent is made most frequently through a treaty or through national legislation. The focus on investment disputes between the host State and the foreign investor means that the origin of the dispute lies most often in governmental acts affecting the investment.

ICSID arbitration takes place under arbitration rules adopted by an intergovernmental body.

Unlike awards in commercial arbitration and in *ad hoc* arbitration, ICSID awards are not subject to the scrutiny of domestic courts. Rather, ICSID has its own self-contained system of annulment. Once an ICSID award is rendered and not annulled by an ICSID annulment committee, it is considered final and must be enforced by Member States under Article 54 of the ICSID Convention.

ICSID awards are recognized and enforced in all Member States like final domestic judgments of the national courts of those States.

It follows that, unlike commercial or *ad hoc* tribunals, arbitral tribunals constituted under the ICSID Convention have unique and distinguishing features demonstrating that they are imbued with governmental authority for purposes of § 1782.

A handwritten signature in black ink, appearing to read "Christoph Schreuer". The signature is written in a cursive style with a long horizontal stroke at the end.

Christoph Schreuer

Vienna, July 7, 2022



## SUMMARY STATEMENT OF QUALIFICATIONS

### Christoph Schreuer

2009 to present	<b>Independent Arbitrator and Expert</b>
2000-2009	<b>University of Vienna, School of Law, Department of International Law and International Relations:</b> Professor of Law
1992-2000	<b>School of Advanced International Studies, The Johns Hopkins University:</b> Edward B. Burling Professor of International Law and Organization; Director: International Law and Institutions
1970-2000	<b>University of Salzburg, School of Law, Department of International Law:</b> Professor of Law (January 1978-Sept. 2000); Head of Department (October 1982 – June 1986); Universitätsdozent (Associate Professor) (June 1976 – January 1978); Universitätsassistent (Assistant Professor) (September 1970 – May 1976)

### EDUCATION

1979 J.S.D. Yale Law School  
1976 Universitätsdozent (venia legendi) University of Salzburg  
1972 Diploma in International Law University of Cambridge  
1970 L.L.B. University of Cambridge, redesignated LL.M. in 1986  
1966 Dr. iur. University of Vienna

### ARBITRATION EXPERIENCE

- Member, Permanent Court of Arbitration 2008-2014
- Member, ICSID Panel of Conciliators and Arbitrators
- Chairman, ILA Committee on the Law of Foreign Investment (2003-2008)
- Member, International Arbitration Institute
- Arbitrator in ICSID and UNCITRAL arbitrations
- Numerous legal opinions in ICSID and non-ICSID investment arbitrations
- Appointing authority in an UNCITRAL arbitration

### PRINCIPAL PUBLICATIONS

- *Die Behandlung internationaler Organakte durch staatliche Gerichte* 381 pp (Duncker & Humblot, 1977).
- *Decisions of International Institutions before Domestic Courts* 407 pp (Oceana 1981).
- *State Immunity. Some Recent Developments* 200 pp (Grotius, 1988).
- *Principles of International Investment Law* (with R. Dolzer and U. Kriebaum) 484 pp (Oxford University Press, 2008, second edition 2012, third edition 2022).
- *The ICSID Convention: A Commentary* 1466 pp (Cambridge University Press, 2001).  
Second Edition with Loretta Malintoppi, August Reinisch & Anthony Sinclair, 1524 pp (Cambridge University Press, 2009).  
Third edition: *Schreuer's Commentary on the ICSID Convention*, S. Schill et al eds (Cambridge University Press, 2022).

- Over 100 articles on a variety of subjects of international law.
- Numerous articles on international investment law.