The ICSID system is it broken or it has to be reformed

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Abstract

Since ICSID was established in 1966, this institution have received both praises and critics. Critics point out that there is bias in favor of investors, that ICSID was established in the interest of wealthy countries, its links with the World Bank Group, the disregard of environmental issues and the lack of an appellate mechanism. Taking into consideration those remarks, the purpose of this article is to assess whether or not the ICSID system is broken or if only needs to be reformed. The thesis that defends this article is that ICSID is not broken at all, the system needs only some reforms that need to be implemented so that it can continue its mission of being a forum of dispute resolution.

Keywords: ICSID, dispute resolution, advantages, enforceability awards, neutrality, transparency.

Introduction

Since ICSID was established in 1966, *this institution has been devoted to international investment dispute settlement. The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment* (ICSID, 2017).

ICSID has received both praises and critics. The hypothesis of this paper is that the ICSID system is not broken as many have stated, the system needs only some reforms that need to be carried out so that it can continue its mission of being a forum of dispute resolution. The purpose of this article is to evaluate whether or not the critics made to ICSID are well grounded and to examine if ICSID is broken or not and if it needs to be reformed.

In spite of some shortcomings such as the lack of an appellate system and the disregards of environmental issues. The system offers more advantages than disadvantages because of the enforceability of its awards, it avoids national courts, and ICSID is a depoliticized institution which is independent, autonomous, as well as transparent, flexible, efficient and neutral.

This paper is structured like this in the first part, It will address the critics that some authors had made to ICSID. In the second part I will assess whether or not those critics to ICSID make sense or are consistent. On the third part, I will expose ICSID advantages and finally some conclusions will be made.

1. Critics to ICSID

First of all, various authors such as Van Harten claim *that there is a bias in favor of the investors. He argues that this is due to the arbitrator's lack of tenure, which makes them dependent on prospective claims. Van Harten also states that arbitration lacks in accountability,*

openness, coherence and independence (Tornakull, 2012)
Mekay states in a similar way that *a little-known entity closely affiliated with the World Bank that mediates disputes between sovereign nations and foreign investors appears to be skewed toward corporations in Northern countries* (Mekay, 2007).
In a similar way, George Kahale, a prominent lawyer publicly declared that ICSID tribunals, before which he has argued cases, were increasingly biased in favor of foreign investors. Kahale and other critics pointed out that since ICSID does not build its cases on legal precedents nor allow for appeals based on judicial reviews, there are no mechanisms to correct flawed rulings. Stating that the system is broken (Robin, 2015)
Second, it is said *that ICSID was established in the interested of wealthy countries and that ICSID arbitration has done more to protect capital exporters states and the equitable interest of their investors than to address the economic and social interests of capital importing states in Africa, Asia and Latin America* (Trakman, 2012). Critics point out that *ICSID is biased in favor of corporate and commercial interests over both government and non-corporate non-governmental actors* (Robin, 2015)
Third, the opponents of ICSID claim also *that ICSID is part of the World Bank Group and as such, it allegedly acts as a proxy for affluent investors from American and prosperous western European countries* (Trakman, 2012). The critics also assert the fact of surrender sovereignty, intrusion on vital areas of national concern and loss of domestic court intervention (Robinson, 2013).
Fourth, is also said that *prompt, fair and effective compensation for a foreign investor from a developed state may unfairly cripple a developing country by perpetuating a history of dominant foreign states* and their investors, dispossessing it of its natural resources (Schreur, Fair and Equitable Treatment in Arbitral Practice, 2005).
Fifth, another criticism is that Low income countries lack the resources to bear the legal fees and related cost of defending against transnational corporations (Memorandum on the Fees and Expenses of ICSID, 2007).
Six, investment arbitration is also criticized for tolerating potential conflicts of interest, the pool of arbitrators is very small indeed, thus arbitrators may be partial to the party that selected them (Subedi, 2017)
Seven, many critics also point out some disregard on environmental issues in many ICSID awards, those critics state the fact that there has been a relegation of environmental concerns in the jurisprudence of the arbitration tribunals (Sornarajah, 2003).
Finally the lack of a genuine appellate process that would allow parties to appeal awards resulting from the faulty legal reasoning of tribunals (Gleason, 2007) And The lack of sensitivity shown by the members of the ICSID tribunals in their decisions on issues relating to defense of collective interests (human rights, environment, indigenous peoples, right and access to water) has also been denounced (Boeglin, 2013).
In a nutshell, the critics to ICSID point out the institution bias in favor of investors, ICSID links with the World Bank, the issue of sovereignty, the huge amount of compensation that developing countries have to pay to foreign investors of developing countries, some possible conflicts of interest in ICSID that can compromise the

partiality of arbitrators, the disregard of environmental issues in ICSID awards and the lack of an appellate mechanism in ICSID.

2. Assessment of the critics

ICSID is not at all biased in favor of investors as the critics to the institution claim, *because States win in roughly half of the cases before ICSID tribunals. More likely, the fact that investors are indeed protected from host states is the normal and intrinsic consequence when a framework of BITS and FTAS is created exactly to protect those foreign investors* (VDB, 2017). Moreover, according to an article written by Hannah Ambrose, *the statistics indicate that ICSID tribunals decide in favor of investors in a far lower percentage of cases than detractors of the investor state dispute resolution system suggest* (Yong, 2015)**.** Besides, According to UNCTAD for example in 2014, 37% (132 cases) had been decided in favor of the State and only 25% of 87 cases were found in favor of the investor (UNCTAD, 2015). Furthermore, arbitration opponents accuse arbitrators of antistate bias, however, *ICSID statistics show that investors won in only 46 percent of all cases decided through June 2012. Tribunal declined jurisdiction in 23 percent of cases, dismissed all claims in 30 per cent and dismissed the claims as manifestly lacking in legal merit in 1 per cent* (Brower, 2013).

Another example that ICSID awards are not biased in favor of investors can be seen in the Report of the Arbitration Institute of the Stockholm Chamber of Commerce. The report shows that most awards have been rendered in favor of respondent States, with 21 % of tribunals declining jurisdiction, 37% denying all of the investor's claims and 42 % of tribunals upholding the investor's claims (UNCTAD, 2016).

Other argument that support the idea that there is not any bias in favor of investor can be found on the study that the postdoctoral fellow of Georgetown University Daniel Behn did in 2014. The study evaluated investment treaty arbitration during three years from 2011 to 2014, and this study shows that the outcome percentages over the past three years do not appear to indicate a proinvestor bias among tribunals. Less than a half of claims were successful and this number does not deviate from the overall percentage of successful claims according to ICSID caseload (Behn, 2014)

Those who criticize ICSID do not provide enough evidence to support their argument, instead there are many sources as we saw that shows that ICSID is not biased in favor of investors. For instance a study made by the legal scholar Susan Franck shows that *developing countries are not subject to more claims under the system and that investors do not win the majority of cases. According to Franck, investors on average won less half of the cases and even when they won, they did not win big. The study found a statistically significant difference between amounts claimed and awarded. Thus Franck concluded that although there are rooms for improvement, investment arbitration was functioning in an unbiased manner* (Lester, 2011).

Another evidence to support that ICSID is not biased in favor of investors is the fact that UNCTAD figures confirm that States continue to win more cases that investors, thus the proinvestor argument is unfounded. This is also confirmed by ICSID statistic 2015/1 which shows that only 46 % of all ICSID awards upheld claims in

part or in full, while 54 % of the claims were dismissed either for lack of jurisdiction or on the merits (EFILA, 2015) .

With reference to the critic that ICSID links with the World Bank, it is important to take into consideration that even though the expenses of the ICSID secretariat are financed out of the Banks Budget, the costs of individual proceedings are borne by the parties involved (Seymour, 2002), so if the costs of those proceedings come from the parties what kind of interference would have the World Bank on the awards of ICSID tribunals?. It is clear that if the parties involved assume those costs it is not possible any kind of influence of the World Bank on the decisions made by the ICSID tribunals.

ICSID links with the World Bank instead of being a shortcoming is a something positive because the intimate relationship between ICSID and the World Bank weighs heavily in favor of the voluntary enforcement of ICSID awards (Brown, 2011)

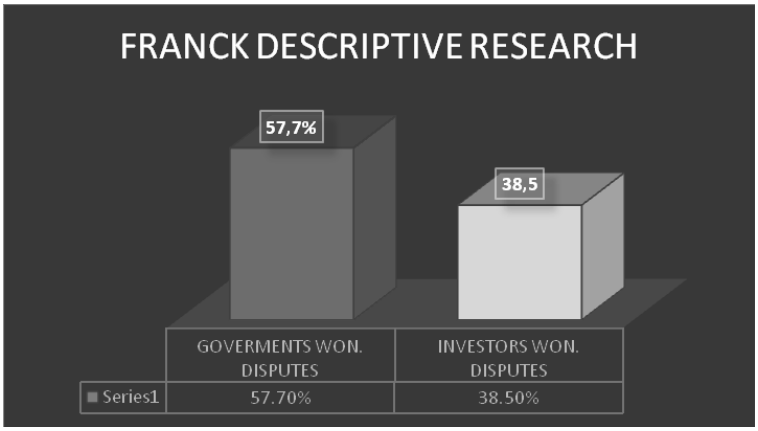
With relation to the issue of the restriction of sovereignty of States. It is important to acknowledge that *the conclusion of a treaty is itself an exercise of sovereignty and limiting the discretion of domestic actors is what treaties do. That states may not invoke their national law to override their international obligations is a principle of international law* so fundamental as to be beyond serious objection (Brower, 2013) This preposition can be found on Article 27 of the Vienna Convention on the Law of Treaties that states that

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty (Convention, 1969)

The critic that states that State sovereignty is undermined by ICSID does not have strong foundations because *well balanced international investment agreements do not prevent States from adopting legislative changes, unless such a measure is discriminatory or arbitrary. Moreover, even if any violation of international investment agreement by adopting controversial legislation was proven in the course of arbitration, arbitral tribunals would not be able to order States to change their legislation* (MFSR, 1992).

In addition, as the professor Roberto Pirozzi points out, consent is the cornerstone of the jurisdiction of the center. This consent needs to be expressed by the parties to the dispute (Pirozzi, 2013), therefore, it remains questionable that ICSID impairs State sovereignty if we take into account that States give their consent to ICSID jurisdiction without any kind of constrain. As Shihata claims *ICSID facilities are available on a voluntary basis. States eligible to join ICSID are obviously free to decline to do so* (Shihata I. , World Bank, 1985).

Another claim that critics of ICSID do is about the huge amount of money that developing countries have to pay as compensation, however, the study that Franck has done show the opposite, her study shows that *when foreign investors do win, the awards paid are not necessary large amounts. Investors on average won less than half of the cases and even when they won, they did not win big* (Gallagner, 2011). For Franck, recent systematic, descriptive quantitative research makes several points. First, governments can and did win investments disputes. In fact, governments 57.7% were more likely than investors 38.5% to win cases and have no damages awarded for alleged treaty



breaches. And second, the average amount awarded, (approximately US 10 million) was a fraction of what investors typically requested (approximately US 343 million) (Franck, 2009).[1]

All those facts, suggests that there is not enough evidence to support the argument that developing countries have to pay huge amounts in arbitral awards or that investors win huge amounts of money.

Regarding the critic about ICSID disregard on environmental issues, this remark is well founded if we take into consideration the relegation of environmental concerns. This fact is visible in the jurisprudence of the arbitration tribunals, examples of this can be found in NAFTA cases like Ehtyl, Pope and Talbot and Metaclad (Sornarajah, 2003). That disregard was also evident in a case involving Costa Rica, in which an ICSID Tribunal held that *environmental concerns could not provide a justification for breaking an agreement to build a tourist complex in Costa Rica, despite the fact that studies showed that the building of the complex would destroy the unique life forms that dwelt in the area* (ICSID, 1992)

Finally, with regard to the critic about the lack of appellate mechanism in ICSID, this critic also makes sense if we take into account that as Guiguo Wang asserts, *there might be errors of law in the interpretation of some tribunals and cases where although the material facts relating to disputes are similar, arbitration tribunals nonetheless came up with different decisions. The reality is that the jurisprudence of investment law is by no means consistent. Even arbitrators on the same tribunal often have different views. In Impregilo˘ for example, the minority arbitrator, in her dissenting opinion, severely criticized decisions rendered by previous investment tribunals on the application of the MFN clause. Fraport vs the Philipinnes and Malysian Historical Salvors vs. Malaysia are two other examples* (Wang, 2012).

As Subedi points out *there have been a number of highly publicized decisions which demonstrate the lack of consistency in international investment arbitration, in cases where the facts are the same or very similar, different investment tribunals have managed to reach diametrically opposing decisions. A case in point are the Lauder arbitrations˘ in which two investment tribunals came to completely contradictory conclusions in spite of there being*

[1] See Franck, Susan, Empirically Evaluating Claims about Investment Arbitration, 86, NC, Rev. 31, 2007.

almost identical factual matrix, parties and legal norms (Subedi, 2017).
Another example that demonstrates the lack of inconsistency in ICSID was found when ICSID arbitrators reached different decision on what kind of measures were necessary for keeping the public order. This can be illustrated in LG&E Energy Corp et al v. Argentine when the tribunal found that Argentina's actions in response to the Argentine crisis of 2001 fell under article XI of the Bilateral Investment Treaty of the US. However, ICSID arbitrators have come to the exact opposite conclusion in Sempra Energy International v. Argentine Republic and Enron Corporation v Argentine (Lopez, 2013)
Given this lack of inconsistency in the jurisprudence of investment law and that errors of law in interpretation can arise, I do believe that there has to be a reform in ICSID so as to introduce an appellate mechanism. A solution would be as Robin states, the implementation of a permanent appellate body to rule on all investment treaty matters regardless of whether the original procedure was carried out at the ICSID (Robbins, 2009).
In spite of the fact of some inconsistency on ICSID awards and the disregard of environmental issues , the other criticisms to the system are not based on strong arguments supported with figures or statistics, they are as Trackman says based one emotions rather than on facts (Trakman, 2012). ICSID has more advantages that disadvantages that is why the system is not broken at all, it needs only some reforms by introducing an appellate mechanism so as to achieve consistency on the Tribunal awards and the implementation of a mechanism to assure that environmental issues are given the priority they deserve, a step in this direction can be as Sornarajah claims the need to evolve a doctrine that requires consideration of environmental issues.
In the last section I will state the advantages of ICSID in order to demonstrate that the institution is not broken.

3. Advantages of ICSID

One of the main advantages of ICSID is that its awards are binding and enforceable. The enforceability of the awards is found in article 54 of the ICSID Convention that says that:
"*Each contracting party must recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by the award as if it were a final judgement of the State's court***s** (Parra, 2007)**.** Moreover, as Filipiuk asserts, *according to Art. 53 of the Convention, as soon as the award is issued, it becomes final and binding for the parties, and creates the obligation for the parties to comply with the award. Noncompliance with the award by the State by virtue of article 53 becomes a violation of the obligation of the State under international law*" (Filipiuk, 2016).
On the issue of enforceability is important to cite to Mayer Brown who claims, *the intimate relationship between ICSID and World Bank weight heavily in favor of the voluntary enforcement of ICSID awards* (Brown, Mayerbrown, 2011). This fact is also recognized by Feit who claims that *because of the institutional link of ICSID with the World Bank, states typically have a strong incentive to comply with ICSID awards.* (Feit, 2015). On the issue of enforceability is important to take into consideration that by virtue of the ICSID

Convention which features 153 contracting states, such awards are automatically enforced in nearly 80% of countries around the world (Matute, 2016).

An example of the enforceability of ICSID awards can be seen in the fact that countries that once were reluctant to ICSID such as Argentina, nowadays are willing to comply with ICSID awards. In fact, as the arbitration Review of the Americas states, the *election of Macri as Argentina's president in 2015 brought an important shift in the country approach towards foreign investment. The Macri administration has committed itself to honoring its international obligations. In this spirit, Argentina settled the Abaclat case, which has been brought before ICSID by thousand Italian bank holders for US 1.35 billion. Argentina also paid hundred millions of dollars to settle arbitral awards in favor of the UKs BG Group and the US El Paso Corporation* (Orta, 2016)

Another advantage of ICSID is the fact of being depoliticized, contrary to domestic courts that have serious setbacks, for instance as Schreuer claims, it is a sad fact than in many countries there is no independent judiciary. Even where courts are not subjected to direct interference by the executive there is inevitably a sense of loyalty towards the Forum State and its national interest. In many cases the source of the investor's grievances is domestic legislation. In such a situation the domestic judge has no choice but to apply the domestic *law and is in no position to offer a remedy* (Schreur, TDM, 2012).ICSID arbitration is also transparent. ICSID publishes the names of the parties of each case, and at least some excerpts of the legal reasoning of the tribunal even without the parties consent (vdb, 2017). A manifestation of the transparency of ICSID, is also the fact that the institution created an expedited process for seeking provisional measures, introduce a new mechanism for raising preliminary objections to frivolous claims, seek to increase transparency through provisions for amicus submissions by third parties, public attendance at oral hearings and publication of awards (Born, 2006). Another illustration of ICSID transparency is the fact that the ICSID convention permits parties to propose the disqualification of arbitrators who show a manifest lack of high moral and recognized competence (Strezhnev, 2016)

An additional advantage of ICSID is its flexibility, as Delaume notes the manner in which ICSID arbitral tribunals are constituted illustrates both flexibility and the effectiveness of ICSID rules. *Flexibility is provided by the permissive character of most of the Convention's provisions. The parties are able to adapt the provisions to their specific needs because most of the rules apply only to the extent that the parties have not agreed otherwise* (Delaume, 1986).

Another evidence of the point expressed above can also be found on the fact that *the rules applicable to ICSID proceedings are flexible in the sense that the parties may derogate from them in order to accommodate their particular needs. For example, most of the provisions regarding the number of arbitrators and the method for their appointment are permissive and apply only in the absence of agreement between the parties* (Shihata, 1986)

It is important also to underline ICSID efficiency, as the Stockolm Chamber of Commerce recognizes, small and medium size enterprises benefit from ISD procedural efficiency, it is usually faster and less costly compared to proceedings in domestic court. The importance of ISD for SMEs is also confirmed by an OECD survey according to which 22 % of ICSID claimants are either individuals or very small corporations with limited foreign operations (ISDS, 2015).

In addition, as Feit points out ICSID provides a neutral forum. *Investors will prefer ICSID arbitration over litigation before the courts of the host State because investors might be concerned about the independence and impartiality of local courts* (Feit, 2015). As Dingwall suggests *ICSID provides a neutral place for arbitration and a roster of qualified arbitrators appointed by states who have ratified the Convention. The ICSID provides participants with speed, expertise and neutrality that is not provided by other dispute resolution mechanism, such as ad hoc UNCITRAL arbitration* (Dingwall, 2013).

One expression of the neutrality that ICSID offers is the fact that it provides a level playing field for the dispute to be heard before impartial and independent decision makers. When the alternative is having a dispute against a government heard in courts that are not independent form that government, the benefit of this neutral forum is apparent (Legum, 2012).

Another important advantage of ICSID is *the legal and practical expertise of the international arbitral tribunal. Unlike national judges who hear many disputes related to various industries and areas of law, the Parties to an international arbitration are able to pick and choose the members of an international arbitral tribunal to hear a specific case depending on the specificities of this case. Arbitrators will therefore be nominated on the basis of their knowledge and experience for example in infrastructure and construction projects, licensing contracts, international sale of goods, joint venture disputes, etc. and on the basis of their legal expertise in the law applicable to the contract*. (Aceris, 2016).

Arbitration in general has many advantages as an avenue of dispute resolution for international investors, sovereign states and the global commercial community as whole. Arbitrations allows the disputing parties the freedom to select as arbitrators those individuals with particular expertise in a specific commercial or economic field (Sedlak, 2004).

To sum up, as Trung suggests, *since the date of establishment, ICSID has proved to be an efficient and reliable dispute settlement mechanism and preferred by host states and investors to other forms of dispute resolution. Most importantly, ICSID offers the investors the opportunity to sue the host states directly without having to recourse to either political or diplomatic measures. Moreover, only ICSID itself can annul the ICSID tribunal's awards. Besides, ICSID has produced a large amount of cases together with a diverse number of analysis, review and comments from many academics and legal practitioners worldwide* (Trung, 2012)

As we have seen ICSID provides many advantages and these are clearly supported by evidence expressed on statistics and concrete examples that support the assertion that ICSID awards can be easily enforced, that ICSID is depolitized, neutral, flexible, efficient, transparent and effective.

Having expressed the advantages that ICSID offers, this last part will address some conclusions on the subject.

Conclusions

ICSID has been an effective institution for the settlement of investment disputes and it is not broken as many have stated, the systems just need some reforms by introducing an appellate mechanism in the institution and by introducing a mechanism to promote among the ICSID system the importance of taking into consideration environmental

issues.

In spite of the advantages that ICSID offers, there are many critics to the system, critics point out bias in favor of investors, that ICSID was established in the interest of wealthy countries, the fact of surrender sovereignty, and the lack of resources from developing countries to bear the legal fees, the lack of an appellate process and so on. Nonetheless, many of those critics are not supported with evidence or figures, they are based more on emotions rather than objective criteria. For instance, UNCTAD statistics show that is not true that ICSID favors investors, States continue to win more cases than investors. The studies made by Franck and Behn also show that investors do not win the majority of the cases. Regarding the critics of the restriction of sovereignty is not clear how ICSID undermines the sovereignty of States if States join ICSID freely and accept ICSID jurisdiction without any kind of constrain. Moreover, the conclusion of a treaty is an act that expresses the sovereignty of States and there is a principle of international law that says that *states are not supposed to invoke their national laws to override international agreements*. Furthermore there is a basic and fundamental principle of international law, *Pacta Sunt Servanda*, therefore, States have to respect their agreements on good faith.

In relation to the remark that developing countries have to pay huge amounts of money, many studies show that when foreign investors win, the awards paid by states are not as much as the opponents to ICSID claim.

From the critics made to ICSID from my perspective the critics that have grounds are the one of the lack of an appellate mechanism in the institution and the other regarding disregard of environmental issues. Those critics are valid if we consider that there might be errors of law and in some cases there is some inconsistency in the jurisprudence of investment law. It is also true that ICSID Tribunals have put aside environmental issues, nonetheless, as Sornarajah states *the day that the law was concerned merely with the protection of foreign investment seem to be over. Environmental concerns will play an increasing role in ensuring that a state can assert its control over foreign investment to pursue environmental goals* (Sornarajah, 2003).

In order to resolve the lack of an appellate body in the ICSID system, I agree with Dohyun who says that the establishment of a body similar to NAFTA Free Trade Commission that provides check on inconsistent ruling with be a solution or the implementation of a permanent appellate body.

In spite of some shortcomings, the lack of an appellate mechanism and the disregard of environmental issues by some ICSID tribunals , the benefits of ICSID are more than its setbacks, because of the enforceability of ICSID awards, it avoids diplomatic protection by providing a fast mechanism to resolve disputes that might arise, because of its transparency, its flexibility, its neutrality, the fact that with ICSID parties avoids national courts, its confidentiality, ICSID is not a politicized institution like many national courts who are not independent from the executive branch.

ICSID has been an effective institution to resolve disputes that may arise between investors and States, the system is not perfect though, however, with the efforts of the international community the institution can strive day by day for achieving the purposes that led to its creation. So, a question for further research that remains unsolved is how to overcome those minor setbacks that the institution has in order

to better respond to the needs of the international community, especially those needs of the investment community. Maybe the establishment of a World Investment Organization with a standing mechanism for settlement of investment disputes as Subedi suggests will be a first step in this direction. Regarding the setback of the inconsistency of ICSID awards a solution to this problem will be as De Agostino proposes to use the Energy Charter Treaty in the field of energy and natural resources and help supply consistency in international arbitration.

In order to solve the issue of the disregard of environmental issues on the ICSID system, efforts have to be oriented towards the promotion of this topic among the ICSID tribunals so that they take into account that a balance has to be made among the interests of investors and the interest of the human mankind as a whole, especially taken into consideration that development and the preservation of environment have to be conciliated so as to achieve the sustainable development goals, in this way a question for future research arises how to make the ICSID system better day by day and how to make it more compatible with the environment?

References

Aceris. (2016, January 4). *International Arbitration Attorney Network*. Retrieved from https://www.international-arbitration-attorney.com/advantages-international-arbitration/

Behn, D. (2014). Legitimacy, Evolution and Growth in Investment Treaty Arbitration. *Goergetown Journal of International law*. Retrieved from https://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00215000363-2.PDF

Boeglin, N. (2013). *ICSID and Latinamerica*. Retrieved from http://www.cadtm.org/ICSID-and-Latin-America-criticisms

Born, G. (2006, april). *wilmerhale*. Retrieved from https://www.wilmerhale.com/pages/publicationsandNewsDetail.aspx?NewsPubId=90393

Brower, C. (2013). The Case against Restatification of Investment Dispute Settlement. *Harvard International Law Journal* .

Brown, M. (2011, december). Retrieved from https://www.mayerbrown.com/publications/enforcement-of-awards-in-icsid-arbitration-12-19-2011/

Brown, M. (2011, December 19). *Mayerbrown*. Retrieved from https://www.mayerbrown.com/publications/enforcement-of-awards-in-icsid-arbitration-12-19-2011/

Convention, V. (1969). Retrieved from https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf

Delaume, G. (1986). ICSID Arbitration Proceddings. *Berkeley Journal of International Law*, 222.

Dingwall, D. (2013). Retrieved from https://www.thelitigator.ca/2013/11/canada-ratifies-icsid-finally/

Dwingwall, D. (2013). Retrieved from https://www.thelitigator.ca/2013/11/canada-ratifies-icsid-finally/

EFILA. (2015, may). Retrieved from http://efila.org/wp-content/uploads/2015/05/EFILA_in_response_to_the-criticism_of_ISDS_final_draft.pdf

Feit, M. (2015, april). *walderwyss*. Retrieved from https://www.walderwyss.com/publications/1603.pdf

Filipiuk, A. (2016, April). *CEU*. Retrieved from http://www.arbitration-icca.org/media/0/12144885278400/enforcement_of_icsid_awards.pdf

Franck, S. (2009, september). *harvarddilij.org*. Retrieved from http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_50-2_Franck.pdf

Gallagner, K. (2011, may). *Thufts* . Retrieved from https://ase.tufts.edu/gdae/Pubs/wp/11-01TreatyArbitrationReappraisal.pdf
Gleason, E. (2007). *International Arbitral Appeals* .
ICSID. (1992).
ICSID. (2017). Retrieved from https://icsid.worldbank.org/en/
ISDS. (2015, MARCH 11). *ISDSBLOG*. Retrieved from http://isdsblog.com/tag/neutrality/
Legum, B. (2012). *arbitratealanta.org*. Retrieved from http://arbitrateatlanta.org/wp-content/uploads/2012/04/Chapter-on-Investment-Treaty-Arbitration.pdf
Lester, S. (2011, june). Retrieved from http://worldtradelaw.typepad.com/ielpblog/2011/06/is-investment-treaty-arbitration-biased-against-developing-countries.html
Lopez, O. (2013). *ISDS*. Retrieved from http://isds.bilaterals.org/?smart-move-argentina-to-leave-the&lang=es
Matute, C. (2016, june 14). *Kluwer*. Retrieved from http://kluwerarbitrationblog.com/2016/06/24/preventing-forum-shopping-in-the-execution-of-icsid-awards-is-it-time-to-revive-the-un-convention-on-state-immunity/
Mekay. (2007, June). *twn*. Retrieved from http://www.twn.my/title2/finance/twninfofinance060702.htm
(2007). *Memorandum on the Fees and Expenses of ICSID.*
MFSR. (1992). Retrieved from file:///C:/Users/lenovo/Desktop/MFSR%20ISDS%20FAQ%20EN%20.pdf
Orta, D. (2016, August 17). *global arbitration review*. Retrieved from http://globalarbitrationreview.com/insight/the-arbitration-review-of-the-americas-2017/1067603/investment-treaty-arbitration-in-the-americas
Parra, A. (2007). Retrieved from http://www.arbitration-icca.org/media/0/12144885278400/enforcement_of_icsid_awards.pdf
Pirozzi, R. (2013). The ICSID Jurisdiction, an issue already solved or a question still opened. *Vindobona Journal of International Commercial Law, 17*.
Robbins, J. (2009, Agost 12). Retrieved from https://uk.practicallaw.thomsonreuters.com/2-422-1266?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1
Robin, B. (2015). Retrieved from http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1898&context=jil
Robinson, M. (2013). Retrieved from www.lawtimesnews.com
Schreur, C. (2005). Fair and Equitable Treatment in Arbitral Practice. *World, Investment and Trade*.
Schreur, C. (2012). *TDM*. Retrieved from https://www.transnational-dispute-management.com/article.asp?key=1822
Sedlak, D. (2004). ICSID Resurgence in International Investment Arbitration. *Penn State International Law Review, 23*.
Sethi, A. (2016, august). Retrieved from http://pennjil.com/an-exaggerated-account-of-icsid-a-reply-to-professor-robin-broad/
Seymour, M. (2002). Retrieved from http://hrsbstaff.ednet.ns.ca/bkhan/misc/Economic_Justice_News_online.pdf
Shihata. (1986). *World Bank*. Retrieved from http://documents.worldbank.org/curated/en/335931468315286974/pdf/34898.pdf
Shihata, I. (1985, july 31). *World Bank*. Retrieved from http://documents.worldbank.org/curated/en/335931468315286974/pdf/34898.pdf
Shihata, I. (1985, july 31). *World Bank*. Retrieved from http://documents.worldbank.org/curated/en/335931468315286974/pdf/34898.pdf
Sornarajah. (2003). the Clash of globalizations and the international law on Foreign Investment. *Canadian Foreign Policy Journal* .

Strezhnev, A. (2016, march). *scholar harvard*. Retrieved from http://101.96.10.63/scholar.harvard.edu/files/astrezhnev/files/are_investment_arbitrators_biased.pdf
Subedi, S. (2017). The Future of International Investment Regulation. *Neth International Law Review, 64*.
Tornakull, C. (2012, december). Retrieved from https lup.lup.lu.se
Trakman, L. (2012). the ICSID under Siege. *Cornell International Law Journal, 45*.
Trung. (2012, June). *Lexology*. Retrieved from https://www.lexology.com/library/detail.aspx?g=796a478c-b353-442e-9dc9-4b21e05b5a95
UNCTAD. (2008). *Recent Development In International Invetsment Agreements* . Retrieved from http://unctad.org/en/Docs/webdiaeia20081_en.pdf
UNCTAD. (2015). Retrieved from trade.ec.europa.eu
UNCTAD. (2016). Retrieved from http://isdsblog.com/category/reports-statistics/
VDB. (2017). Retrieved from www.vdb.bi.com
vdb. (2017, april). *vdb*. Retrieved from http://www.vdb-loi.com/wp-content/uploads/2017/04/Should-Myanmar-Join-the-International-Convention-for-the-Settlement-of-Investment-Disputes.pdf
Wang, G. (2012). Threat of Inconsistent Awards to International Investment Law. *KLRI Journal of Law and Litigation, 2*.
Yong, L. (2015). 50 new cases for the ICSID at 50 December . Retrieved from www.gqualcampaign.org