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ARBITRATING WITH ICSID: WHAT EVERY INVESTOR SHOULD KNOW

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Abstract
International Investment is a critical contributor to the economic growth, development, and stability of many countries in the world, thereby playing an integral role in nation building. Although international agreements relationships may take various forms, yet, like many other business or non-business interactions, disputes are bound to arise. The introduction of the International Centre for Settlement of Investment Disputes (ICSID) is an asset to curtail the power imbalance in the resolution of disputes arising from international investments. This paper adopted the doctrinal research design to distill and discuss the salient legal provisions of ICSID Convention, while using data gathered through primary and secondary sources of data. The study discovered that ICSID plays a fundamental role in dispute resolution, essentially international investment disputes. In addition, the study found that certain provisions of the convention are geared towards ensuring substantive and procedural fairness between host States and foreign investors in dispute resolution. The study concludes that the adoption of arbitration through ICSID is a proactive and robust approach to the resolution of international investment disputes between host States and foreign investors. The study recommends the need to clarify on the narrow jurisdictional scope of ICSID by elaborating on what constitutes investment, and who an investor is.

Keywords: Arbitration, ICSID convention, international investment, international agreement, international arbitration.

1. Introduction

The divergences looming the international space has made it almost impossible to reach agreements between parties. This divergence has been made manifest due to the variant ideas about what and which rights is to be protected in the interest of investors. Nonetheless, in an attempt to salvage this situation, what must be done to ensure that the interests and sanity of international investors and investments respectively are persevered and guaranteed? The failures experienced in repeated attempts to reach a compromise in the course of such disputes necessitated the establishment of the International Centre for Settlement of Investment Disputes (ICSID) by the World Bank. The option to establish a purely procedural framework for settling disputes through the ICSID convention, which was signed in 1965, was the only feasible choice as the regulation of the level of protection which foreign investors could rely on seemed less productive. ICSID has gained great support from countries due to its sole emphasis on the procedural aspects than substantive provisions which it has left under the auspices of contracting states.

Although the relevance of ICSID is undoubtable, yet, a major challenge that may be faced in the mid-twentieth century is that of State's intervention in economic matters. Before now, disputes amidst governments and foreign investors were only capable of resolution through government intervention, where countries with power or greater power often won. However, through the introduction of ICSID, a balanced approach has and can be ascertained by the institution of an independent dispute resolution approach, with emphasis on the rule of law in deciding disputes, which was first introduced in the World Trade.[1]

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[1] 'Why ICSID was established' <http://isdsblog.com/2015/09/25/why-icsid-was-established/> accessed 20 February 2025.

2. Nature of International Centre for Settlement of Investment Disputes (ICSID)

The International Centre for Settlement of Investment Disputes (ICSID) happens to be the world's foremost institute charged with a task of the settlement of international investment disputes. It has exhibited its knowledge and expertise in the resolution of many international investment cases. In many cases, that is international investment agreements, states have acceded to the use of ICSID as a medium for the settlement of investor-state disputes. The establishment of ICSID can be traced back to the year 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of other States. ICSID Convention is but a multilateral treaty formulated by the World Bank, precisely the Executive Directors of the Bank. This further aided the promotion of international investment without hindrances especially as it relates to the resolution of disputes.[2]

It should be noted that ICSID is an autonomous and efficient institution for the resolution of investment disputes with no political influences. As its nature is, it provides confidence in the dispute resolution process, thereby appealing to investors and state to facilitate international investment. In the same vein, it is available for state-state disputes under investment treaties and free trade agreements, and as an administrative registry. ICSID makes provisions for the settlement of disputes through the process of conciliation, fact finding or even arbitration. It is patterned to take cognizance of certain features of international investment disputes and the parties involved, sustaining a careful balance between the interests of investors and the host state.[3]

3. Legal framework on ICSID

The importance of ICSID should not be in any way undermined. This section of this paper considers the provisions of the framework that gave rise to ICSID and some salient provisions therefrom. The International Centre for Settlement of Investment Disputes is the brain child of the Convention on the Settlement of Investment Disputes between States and Nationals of other States. The preamble of the later gives an overview as to the focus of ICSID. Accordingly, it states that Contracting States considering the need for international cooperation for economic development, and the role of private international investment therein; bearing in mind the possibility that from time to time disputes may arise in connection with such investment between contracting States and nationals of other contracting states; recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases; attaching particular importance to the availability of facilities for international conciliation or arbitration to which contracting states and nationals of other contracting states may submit such disputes if they so desire.[4]

Furthermore, if desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development; recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and declaring that no contracting state shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration, have agreed as follows.[5]

The convention is subdivided into ten (10) chapter, with a total of 75 articles. These 10 chapters houses diverse areas and concerns of focus. As a breakdown, chapter I focuses on the 'International

[2] 'ICSID Convention Arbitration Rules' <https://icsid.worldbank.org/resources/rules-and-regulations/convention/arbitration-rules> accessed 25 February 2025.
[3] 'About ICSID' <https://icsid.worldbank.org/About/ICSID> accessed 25 April 2025.
[4] ICSID Convention, Regulations and Rules, <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf> accessed 22 March 2025.
[5] ICSID Convention, Regulations and Rules, <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf> accessed 29 April 2025.

Centre for Settlement of Investment Disputes'; chapter II looks at the 'Jurisdiction of the Centre'; while chapter III considers 'Conciliation'. Chapter IV makes provisions on 'Arbitration', while chapter V focuses on the 'Replacement and Disqualification of Conciliators and Arbitration'. Chapter VI makes provisions on the 'Cost of Proceedings' and chapter VII provides for the 'Place of proceedings.' Chapter VIII houses provisions on the 'Disputes between Contracting States'; while chapter IX provides for the 'Amendment' section. The final section of the convention, Chapter X, houses the 'Final provisions.'

Article 1 of the convention is presupposed one of the fundamental provisions of this convention. Here, article 1 states that there shall be established the International Centre for Settlement of Investment Disputes (hereafter called the centre). Sub article (2) stipulates that the purpose of the centre shall be to provide facilities for conciliation and arbitration of investing disputes between contracting states and nationals of other contracting states in accordance with the provisions of this convention. Article 2 states that the seat of the centre shall be at the principal office of the international Bank for Reconstruction and Development.

Article 12 of the convention makes provisions that the panel of Arbitrators shall consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon. The connotation of this is that only qualified persons must sit as panelists. On the composition of the panel, article 13 states that the contracting state may designate to each panel four persons who may, but need not, be its nationals. Therefore, the contracting state may elect its nationals or otherwise to serve in the panel as arbitrators. However, this is not mandatory. Thus, the contracting state may or not choose its nationals. Article 14 makes further provisions on the composition of the panelists. Sub article 1 states that those persons who are 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. The article went on to state that competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators. Whereas the panel members shall serve for a renewable period of 6 years by virtue of article 15 (1), in the case of death or resignation of a member of a panel, the authority which designated the member shall have the right to designate another person to serve or the remainder of that member's term under article 15 (2).

To aid the furtherance of its functions, the panel is endowed with status, immunity and privileges. Article 18 states that the centre shall have full international legal personality which shall include the capacity to contract, acquire and dispose of movable and immovable property, and to institute legal proceedings. These privileges shall be enjoyed also in the territories of each contracting state.[6] By virtue of article 20, the properties and assets of ICSID shall enjoy immunity from legal processes, except where such is waived. The jurisdiction of ICSID is fundamental to this paper. Article 25 provides that the jurisdiction of ICSID 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. This consent, haven been given, shall not be withdrawn by any party unilaterally.

Sub article 25 (2) (a) went on to define who a 'national of another contracting state' is as: any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of article 28 or paragraph (3) of article 36, but does not include any person who on either dates also had the nationality of the Contracting State party to the dispute; and sub article 25 (2) (b) states that it is any juridical person which had the nationality of a Contracting State other than the State party to

[6] ICSID Convention, Regulation and Rules, art 19.

the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

Furthermore, in the case of a subdivision or agency of a contracting state, consent shall require the approval of that state unless that state notifies the centre that no such approval is required.[7] In like manner, a contracting state may, at the time of ratification, acceptance or approval of this convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to jurisdiction of the centre. This notification shall then be transmitted to all other contracting states by the Secretary-General.[8]

Fundamentally, article 26 states that the consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention. On the other hand, article 27 bars any party from giving any form of diplomatic protection, or bringing an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute. Sub article (2) however gives an interpretation of a diplomatic protection as not including informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

The convention makes specific provisions on arbitration in chapter IV of the convention. There, the convention addresses issues such as the request for arbitration, constitution of the tribunal, powers and functions of the tribunal, the Award, interpretation, revision and annulment of the award, and recognition and enforcement of the award. Article 36 states that contracting state or any national of a contracting state wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party. This 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. After which, 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.

Under article 37, the Arbitral Tribunal shall be constituted as soon as possible after registration of a request pursuant to Article 36. In sub article (2) (a) the Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree. However, where parties are unable to reach a decision on the numbers of arbitrators, the 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. Where this tribunal has been constituted 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.[9]

[7] Ibid, art 25 (3).
[8] Ibid, art 25 (4).
[9] Ibid, art 38.

In the interest of justice and fairness, article 39 states that the majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State who's national is a party to the dispute; provided, however, that the foregoing provisions of this article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties. The arbitrators may be appointed from outside the panel of arbitrators, except in the case of appointments by the Chairman pursuant to article 38. Arbitrators appointed from outside the panel of Arbitrators shall possess the qualities stated in paragraph (l) of Article 1.[10] By virtue of article 41, the powers and functions of the tribunal, commencing with the fact that the tribunal shall be the judge of its own competence is well itemized. As a result, the tribunal shall determine any matter challenging its competence to entertain a dispute. Article 42 went on to state that the tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. Where such is absent, the tribunal shall apply the law of the contracting state party to the dispute, including rules of conflict of laws, and such rules of international law as may be applicable.[11] By virtue of article 43, where the parties agree, the tribunal may, where necessary, call upon the parties to produce documents or other evidence, and visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Arbitration proceedings shall be conducted in accordance with the provisions of article 44 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. Article 45 (1) makes provisions on issues of non-appearance. As a result, the failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions. Hence, if a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so. Article 46 states that except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Furthermore, article 47 states that, except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party. In article 48, the convention makes provisions on award. It states that the Tribunal shall decide questions by a majority of the votes of all its members. Furthermore, as a requirement, the award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it. The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent. Also, the centre shall not publish the award without the consent of the parties.

Article 49 states that the Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched. The Tribunal, upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. It must however be noted that the periods of time provided for under paragraph

[10] Ibid, art 40.
[11] Ibid, art 42 (1).

(2) of article 51 and paragraph (2) of article 52 shall run from the date on which the decision was rendered.

In article 50 (1) if any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General. The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51 (1) states that either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal, and to the applicant and that the applicant's ignorance of that fact was not due to negligence. In sub-section 2, the application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered. Article 51 (3) states that the request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52 (1) provides that 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. Sub article 2 provides that 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.

On receipt of the request, the Chairman shall forthwith appoint from the panel of arbitrators an ad hoc Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the panel of arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (l). The provisions of articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply mutatis mutandis to proceedings before the Committee. Sub article 5 provides that the committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the committee rules on such request. By virtue of article 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.

Article 53 (1) provides that 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. In sub article 2, it provides that for

the purposes of this section, 'award' shall include any decision interpreting, revising or annulling such award pursuant to articles 50, 51 or 52.

Through article 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. Furthermore, a party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority, which such State shall have designated for this purpose, a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation. Whereas article 54 (3) states that the execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought, article 55 directs that 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.

4. Revalidating the Relevance of ICSID in 21st Century Arbitration

The most unusual aspect of the international legal framework governing Foreign Direct Investment (FDI) is the arbitral mechanism, which has evolved into a 'institution' for resolving conflicts between investors and host governments.[12] A common feature of International Investment Agreements (IIAs), whether they are investment contracts governing the relationship between an investor and the host State regarding a single investment or investment treaties governing the relationship of investors of a State (the 'home State') with one or more other States in which the investor has an investment (the 'host State'), is the inclusion of clauses allowing investors to directly sue the host State before an ad hoc arbitral tribunal in case of dispute, even though this model cannot (yet) be considered to have become part of customary international law for regulating the relations between investors and host States.[13] Arbitral tribunals have played a pivotal role in establishing the international investment system, and there is every reason to think that investor disputes will remain a major factor in the development and evolution of global FDI rules.[14]

The idea that a host state must demonstrate a 'friendly investment climate' by establishing an efficient rules-based regime managing its relations with investors is arguably the rationale behind having such an odd dispute resolution method.[15] The presence of a dispute settlement mechanism distinct from domestic judicial and administrative procedures is believed to contribute to such a favorable investment climate in the host state, in addition to a number of substantive protections in favor of investors (fair and equitable treatment, full protection and security, protection against (indirect) expropriation, etc.).[16]

Investors believe arbitration offers a number of benefits. First, domestic judicial institutions are typically circumvented, along with their purportedly drawn-out processes and their perhaps

[12] Jan Wouters and Nicolas Hachez, 'The Institutionalization of Investment Arbitration and Sustainable Development' in Marie-Claire Cordonier Segger, Markus Gehring and Andrew Newcombe (eds), *Sustainable Development in World Investment Law* (Kluwer Law International 2011); Karl P Sauvant (ed), *Appeals Mechanism in International Investment Disputes* (Oxford University Press 2008).

[13] Bernard Kishoiyian, 'The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law' (1994) 14 Northwestern Journal of International Law and Business 327.

[14] UNCTAD, 'Investor-State Dispute Settlement and Impact on Investment Rulemaking' <http://www.unctad.org/en/docs/iteiia20073_en.pdf> accessed 28 April 2025.

[15] Susan D Franck, 'Challenges Facing Investment Disputes: Reconsidering Dispute Resolution in International Investment Agreements' in Karl P Sauvant (ed), *Appeals Mechanism in International Investment Disputes* (Oxford University Press 2008).

[16] Ibid.

dishonest, prejudiced, or inept judges. Thus, the foundation of investor-state arbitration is mistrust of domestic legal systems.[17] Second, a foreign investor can avoid the drawbacks and uncertainties of the traditional diplomatic protection process by using direct arbitration between the foreign investor and the host State for the latter's breach of an international obligation. In this process, a foreign investor must rely solely on the goodwill and authority of its home State to have a wrong rectified.[18] Third, international arbitration is believed to be more effective than domestic judicial processes because its procedures are more flexible and because the awards are final and not subject to appeal.[19] As can be seen, the benefits of arbitration are direct for investors while they are indirect for host states, who hope to communicate favorably to potential investors by ceding the jurisdiction of their own courts, potentially leading to an increase in incoming capital.[20] Investors have continued to use arbitration to defend their rights under international investment instruments, particularly in the past ten years, even if the beneficial impact on investment flows has not yet been proven.[21]

5. ICSID Award: The Possibility of an Appeal

The essence of ICSID is to facilitate arbitration proceedings between a host country's government and investors in the home country. As a result, ICSID provides the facilities and procedural framework for international arbitration, but ICSID itself does not arbitrate disputes. Rather, ICSID provides guidelines for selection of arbitrators and conducting proceedings.[22] Article 48 of the ICSID convention is very vital to the function and essence of ICSID. By virtue of article 53, the convention states clearly that an award made by the tribunal is conclusive, final and cannot be appealed against; hence, parties to the proceedings are to comply with such decision. The connotation of this provision is clear and straightforward as it upholds one of the core essence and merit of ICSID. The decision of ICSID is tantamount to the decision of the apex court in any domestic setting, that is, sovereign state, and as a result, the decisions made by the latter is seen to be final, binding and unchallengeable. Although the award of a tribunal may be challenged on certain conditions, yet to appeal such decision is to force a cow through the eyes of a needle.

Nevertheless, extreme diligence must be taken to properly understand the difference, yet seeming similarity, between appeal of an arbitral award (as seen in article 53) and the annulment of an award (in article 52). Whereas the appeal of an arbitral award questions the substantive correctness of the decision and its procedural legitimacy, the idea of annulment seeks to question only the procedural

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[17] Stephan Schill, 'Private Enforcement of International Investment Law: Why We Need Investor Standing in BIT Dispute Settlement' in Michael Waibel and others (eds), *The Backlash against Investment Arbitration – Perceptions and Reality* (Kluwer Law International 2010).

[18] Stephan Schill, 'Private Enforcement of International Investment Law: Why We need Investor Standing in BIT Dispute Settlement' in Michael Waibel and others (eds), *The Backlash against Investment Arbitration – Perceptions and Reality* (Kluwer Law International 2010).

[19] Susan D Franck, 'Empirically Evaluating claims about Investment Treaty Arbitration' (2006-2007) 86 North Carolina Law Review 1.

[20] Olivia Chung, 'The Lopsided International Investment Law Regime and its Effect on the Future of Investor-State Arbitration' (2007) 47 Virginia Journal of International Law 953.

[21] Mary Hallward-Driemeier, 'Do Bilateral Investment Treaties attract Foreign Direct Investment? Only a Bit … And They Could Bite' <http://econ.worldbank.org/external/default/main?pagePK=64165259&piPK=64165421&theSitePK=4693 72&menuPK=64216926&entityID=000094946_03091104060047> accessed 12 April 2025; Jason Webb Yackee, 'Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment?' (2008) 42 Law and Society Review 805; Jeswald Salacuse and Nicholas Sullivan, 'Do BITs Really Work? An Evaluation of Bilateral Investment Treaties and their Grand Bargain' (2005) 46 Harvard International Law Journal 67; UNCTAD, 'Latest Developments in Investor-State Dispute Settlement' <http://unctad.org/en/PublicationsLibrary/webdiaeia2012d10_en.pdf> accessed 12 April 2025.

[22] BJ Farrar, 'Note, To Legislate or to Arbitrate: An Analysis of U.S. Foreign Investment Policy after FINSA and the benefits of International Arbitration' (2008) 7 JIBL 167; SE Blythe, 'The Advantages of Investor-State Arbitration as a Dispute Resolution Mechanism in Bilateral Investment Treaties' (2013) 477 The International Lawyer 274.

legitimacy of the tribunal's decision. To annul an award, ICSID convention provides that certain fundamental issues must have occasioned themselves in the implementation of procedural rules needed to resolve the dispute. On the other hand, where an appeal is demanded, although not permissible in arbitration, the applicant of such an appeal contests the appropriateness of the substantive decision of the arbitrator(s).

6. Conclusion and Recommendations

The importance of ICSID in facilitating international investment is immeasurable. Its timing is exquisite. Through ICSID arbitration, contracting states and investors can go about carrying out their activities without fear or intimidation. ICSID encourages not just investment but international collaboration by smoothening out an area of human and business interaction which could constitute a serious hurdle, or a clog in the wheels of international investment. The efficacy of this dispute resolution process in investment treaty disputes is guaranteed by arbitration proceedings under the ICSID. Depending on the particulars, arbitrating or using another mechanism may be the appropriate course of action in an investment dispute. However, a thorough review of a dispute settlement method for handling investment conflicts would indicate the effectiveness of that mechanism. In a study completed utilizing a statistical approach to measure the performance of ICSID arbitrations, ICSID showed quite effective. Most disputes with an arbitration proceeding initiated were resolved, and awards were given to the parties that faced damages.[23]

The study maintains that ICSID convention is a veritable asset in international investment dispute resolution, nevertheless, there are certain recommendations that could help make the convention next to perfect. First, there is a need for ICSID Convention to clarify on the jurisdictional scope of the centre. The subsisting definitions of the terms, 'investor' and 'investment', are quite vague. Hence, the convention must provide an expansive definition to give clarity as to what these terminologies mean. In addition, the annulment process of ICSID is rather narrow, giving little or no attention to substantive errors. It is thus recommended that an appellate mechanism be adopted to review arbitral awards where necessary to facilitate consistency in annulment processes. Finally, there is also a need to balance both investor rights with host state responsibilities. The practice of dispute resolution under the centre and the provisions of the centre must be balanced in the sense that the right of foreign investors and host State must be equally upheld. ICSID should not be seen to favour foreign investors as against host States.

[23] Colin J Luckie, 'How effective have ICSID arbitrations been in resolving disputes resulting from alleged breaches of International Investment Agreements? Case: Direct Expropriation, Indirect Expropriation and National Treatment' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4746459> accessed 27 April 2025.