An Introduction to ICSID and the Work of a Tribunal Secretary

Meg Kinnear
ICSID Secretary-General &
World Bank Group Vice-President

March 24, 2022
Established as Part of World Bank Group

- ICSID was established in 1966 by the World Bank Executive Directors, under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID Convention)

- Entered into force on October 14, 1966, after the first 20 State ratifications
# ICSID and the World Bank Group

<table>
<thead>
<tr>
<th>ICSID</th>
<th>IBRD</th>
<th>IDA</th>
<th>IFC</th>
<th>MIGA</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Centre for Settlement of Investment Disputes</td>
<td>International Bank for Reconstruction and Development</td>
<td>International Development Association</td>
<td>International Financial Corporation</td>
<td>Multilateral Investment Guarantee Agency</td>
</tr>
</tbody>
</table>

**MISSION:**
- Provides facilities for conciliation and arbitration of international investment disputes
- Lends funds to governments of middle and low-income countries
- Provides interest-free loans and grants to governments of poorest countries
- Provides loans, equity and technical assistance to stimulate private sector investment in developing countries
- Guarantees for investors in developing countries against non-commercial risk
Unique and Innovative Features of the ICSID System

• Allows individuals and legal persons to have direct recourse to arbitration against a State

• Designed to maintain a careful balance between the interests of investors and host States

• An impartial, autonomous and self-contained system
  – No issue of seat of arbitration in unfamiliar jurisdiction
  – Post-award remedies (interpretation, revision and annulment) are all administered by ICSID

• Enforcement mechanism
  – Specialized and simplified enforcement mechanism
  – High rate of voluntary compliance
  – Saves time, money and ensures predictability
Special Enforcement Features of ICSID Convention Awards

- ICSID Awards are final and binding, subject to limited post-award remedies (Arts. 50-52 ICSID Convention)
- Annulment available under Art. 52 ICSID Convention – no appeal in local courts
- ICSID annulments are decided by an ad hoc Committee, whose members are appointed by the Chairman of the Administrative Council from the ICSID Panel of Arbitrators
- Member States must recognize monetary awards without further process
- Monetary award is enforceable as a final judgment in any Contracting State
International Membership: 156 States & 8 Signatories (ICSID/3)
Newest ICSID Members: Djibouti

- July 9, 2020 (in force)
Newest ICSID Members: Republic of Ecuador

• September 3, 2021 (in force)
## Structure of ICSID

### ADMINISTRATIVE COUNCIL
- One representative of each Member State
- One vote per State
- Chairman is President of the World Bank (no vote)

### FUNCTIONS
- Adopt ICSID arbitration and conciliation rules
- Adopt annual budget and approve annual report
- Select SG and DSG(s)
- Designate persons to Panels of Arbitrators and Conciliators

### SECRETARIAT
- Secretary-General
- Deputy Secretaries-General
- Staff (67 people)

### FUNCTIONS
- Support proceedings
- Training and technical assistance
- Publications
ICSID Secretariat
Areas of Work: Case Administration
ICSID Proceedings

Convention
Both disputing parties from ICSID Member States
- Conciliation
- Arbitration

Additional Facility
One disputing party from Member States
- Conciliation
- Arbitration
- Fact-finding

Other
Need not be from Member State
- Case administration under other Rules or Treaties (e.g.: UNCITRAL or other investment cases; FTA & State-to-State cases)
- Other functions on consent of parties (e.g.: Appointing Authority, Mediation, Registry)
- Acting as Secretariat for Regional Trade Agreements (e.g.: CETA, EU-Singapore; EU-Vietnam; EU-Mexico)
Conduct of an ICSID Convention Arbitration

- Requesting party files a request for arbitration
- Screening and registration of the request for arbitration
- Number of arbitrators and the method of their appointment are established
- Tribunal members are appointed
- Tribunal is constituted and the proceeding begins
- Tribunal holds a first session with the parties
- Written procedure: jurisdiction, merits and damages may be addressed separately or jointly
- Oral procedure: jurisdiction, merits or damages may be heard separately or jointly
- Deliberations
- Award (disposes of the case)
- Post award remedies: supplementary decision and rectification, annulment, revision, interpretation
- Recognition and enforcement

Other procedures:
- mandate, role of legal merit
- preliminary objections
- confidentiality and transparency
- disqualification of arbitrator
- information
- provisional measures
- production of documents
- non-disputing party's submission
- discontinuance of the proceeding
ICSID Caseload

* See ICSID Caseload Statistics 2022-1
Increase of ISDS

Figure 1. Trends in known treaty-based ISDS cases, 1987–2020

Source: UNCTAD, ISDS Navigator.
Note: Information has been compiled from public sources, including specialized reporting services. UNCTAD’s statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signaled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not match exactly case numbers reported in previous years.
Role of ICSID Counsel

- Main role is casework
- Expected to help with outreach – presentations on ICSID and ISDS
- Part of ongoing projects related to ISDS – e.g.: Code of Conduct, case management systems
- Help with ICSID Review
Areas of Work: Outreach
Areas of Work: Institutional Projects
Working at ICSID

• Truly international environment
• Small, diverse staff
• Individual responsibility for cases
• Interesting cases in a new, growing area of law
• Close contact with renowned jurists, counsel & State officials
• Other side of the “looking glass”
• Involvement in shaping procedural reform
Characteristics of Employment at ICSID

• Must maintain strict neutrality
• Assist the process, but are not the decision-maker; unique role
• Who are your clients?
  – Member States
  – Parties and their representatives
  – Arbitrators
Further Reading

- Primer on ICSID
- The ICSID Caseload – Statistics (2022-1)
- 2021 ICSID Annual Report
- ICSID/3 - List of Contracting States
- ICSID/8 – Measures by Member States
- ICSID/10 - ICSID Panel of Arbitrators
- Guide to Membership in the ICSID Convention
- Special Features and Benefits of ICSID Membership