
ICSID Awards

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ICSID Awards

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INTRODUCTION

The ability to seek the annulment of arbitral awards rendered under the aegis of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention) is one of the key features of the ICSID regime. It enables a party to challenge the validity of an arbitral award, within the bounds of the Convention's limitative grounds for annulment as they are listed in Article 52(1) of the Convention and notwithstanding the ICSID regime's foundational principle of finality of ICSID awards. Furthermore, this regime significantly constrains the role of domestic courts in connection with the recognition and enforcement of awards.

ICSID arbitration remains very active. During 2020, a total of 54 new arbitrations were instituted under the ICSID Convention and three pursuant to the ICSID Additional Facility Rules. The Convention also continues to attract new Member States, with Djibouti becoming, as of June 2020, the 155th state to ratify the Convention since its entry into force in 1966. Nevertheless, the ICSID annulment and enforcement regime still faces a number of challenges, ranging from the degree of scrutiny of ICSID awards in the annulment process to the recognition and enforcement of intra-EU investment treaty awards, as well as growing instances of non-compliance with adverse awards.

ANNULMENT OF ICSID AWARDS

OVERVIEW OF GROUNDS FOR ANNULMENT AND STATISTICS

According to Article 53(1) of the ICSID Convention, an ICSID 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 [the] Convention’. Thus, the procedure for annulment under the Convention is the only procedure by which an ICSID award can be challenged. Furthermore, unlike procedures for setting aside decisions rendered by domestic courts and those that can be appealed to domestic higher courts, annulment decisions rendered by ICSID ad hoc committees are final and are thus not subject to any type of additional review. This aspect is viewed by many as an essential safeguard provided by the ICSID regime, which permits control of the ‘fundamental integrity of the ICSID arbitral process in all the facets’ while ensuring the ‘finality and stability of ICSID awards’. Consequently, Article 52(1) of the Convention limits the possibility of seeking the annulment of an ICSID award to the following five 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.

Grounds for annulment under the ICSID Convention are thus limited and annulment proceedings are to be clearly distinguished from appeal proceedings before domestic courts,
whereby a substantive *de novo* review of the lower court’s factual and legal findings is often allowed.\[^5\]

Recent *ad hoc* committee practice confirms the exceptional nature of the annulment mechanism. Since February 2018, 26 annulment proceedings have led to a decision on annulment. Only one award has been annulled in full\[^7\] and one award annulled in part.\[^8\]

These recent statistics confirm the more restrictive approach to annulment adopted by ICSID *ad hoc* committees over the years. Nevertheless, the number of applications for annulment registered at ICSID has been steadily increasing, from only three in 2010,\[^9\] to 19 in 2020.\[^10\]

**PROCEDURE**

**THE APPLICATION**

Either party to a dispute may seek the annulment of an ICSID award by filing an application with the ICSID Secretary General within 120 days of the date the relevant award was rendered. Pursuant to ICSID Arbitration Rule 50(1)(c)(iii), the applicant for annulment is required to ‘state in detail’ the grounds for annulment that are being invoked, with express reference to Article 52 of the Convention. The only exception to this procedure applies when an applicant for annulment invokes corruption on the part of a member of the arbitral tribunal as a ground for annulment. In that case, and pursuant to Article 52(2) of the Convention, a party may apply for annulment up to 120 days after the discovery of the corruption, provided this period does not exceed three years after the arbitral tribunal has rendered its final award.

**THE AD HOC COMMITTEE**

Once an application for annulment had been successfully registered, the chairman of ICSID’s Administrative Council appoints a three-member *ad hoc* committee selected from ICSID’s Panel of Arbitrators. An ICSID *ad hoc* committee operates pursuant to the same rules as the underlying arbitration, with the ICSID Arbitration Rules applying *mutatis mutandis*.\[^11\] Procedural matters are typically handled in a similar manner to the underlying arbitration, with a preliminary discussion of procedural matters, the filing of memorials and counter-memorials, the organisation of oral hearings, with the subsequent decision by the *ad hoc* committee.

An *ad hoc* committee’s decision is final and binding and is not susceptible to appeal or further annulment proceedings. By contrast to the UNCITRAL Rules, which allow parties to seek the annulment of an award in the domestic courts of the seat of the arbitration,\[^12\] domestic courts may not intervene in ICSID annulment proceedings and may not set aside ICSID awards or ICSID annulment decisions.

**SCOPE OF REVIEW**

Seeking the annulment of an ICSID award is not tantamount to seeking an appeal before a domestic court. Instead, an *ad hoc* committee’s review is inherently limited.\[^13\] The *Orascom v. Algeria* Committee explained in this regard that ‘the drafters of the ICSID Convention opted for the model of a limited review’ and that the annulment process ‘is not an appeal, it differs from it. It is not concerned with the substantive correctness of the award but with the integrity of the decision-making and the process which has led to the decision’.\[^14\]

**GROUNDS FOR ANNULMENT**

**IMPROPER CONSTITUTION OF THE TRIBUNAL**
OVERVIEW

Article 14(1) of the ICSID Convention identifies the expected characteristics and qualifications of the individuals who are designated to serve on the Panel of Arbitrators and provides in particular that these individuals:

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 Arbitrations.

Article 40(2) of the Convention further adds that even arbitrators 'appointed from outside the Panel of Arbitrators shall possess the qualities stated' in Article 14(1).

If a party to an ICSID arbitral proceeding deems that a member of the arbitral tribunal designated to adjudicate the dispute fails to demonstrate the qualities put forward in Article 14(1) of the Convention, it may seek the annulment of the arbitral award on the basis of Article 52(1)(a) of the Convention on the ground that 'the Tribunal was not properly constituted'.

Article 52(1)(a) has seldom been invoked, as compared to other grounds for annulment. This is mainly explained by the fact that the ICSID Secretariat closely monitors the constitution of the arbitral tribunal, such that any issues that may arise at this stage of the arbitration are typically resolved in a timely fashion, usually by way of applications for disqualification made during the course of the arbitration. But

Nevertheless, resort to this ground for annulment has increased significantly during the past few years. It has been invoked by applicants in no less than eight applications for annulment during the past two years alone, raising the number of annulment decisions that have addressed this annulment ground to 18. The Eiser v. Spain ad hoc annulment committee decision in 2020 constitutes the first decision that annulled the underlying award on the ground of Article 52(1)(a) of the Convention.

AD HOC COMMITTEE PRACTICE

ICSID ad hoc committees have traditionally deemed a request for annulment of an arbitral award on the ground of Article 52(1)(a) to be inadmissible when the applicant has failed to exhaust all available avenues for disqualification of the arbitrator during the pendency of the underlying arbitration. Applications based on this ground were considered admissible when the facts challenging the arbitrator’s ability to serve on the arbitral tribunal have surfaced at a stage of the proceeding where the applicant was no longer in a position to challenge the constitution of the arbitral tribunal during the course of the main proceeding.

The Eiser v. Spain annulment proceeding is the first in which an award was fully annulled on the basis of Article 52(1)(a) of the Convention. Spain sought the annulment, alleging that the failure by a member of the arbitral tribunal to disclose his long-standing relationship with the opposing party’s quantum and regulatory expert constituted a ‘manifest appearance of bias’ that warranted the annulment of the award. The Eiser committee explained that although the role of an annulment committee is limited to safeguarding the legitimacy of arbitral proceedings, ‘there can be no greater threat to the legitimacy and integrity of the proceedings or of the award than the lack of impartiality or independence of one or more
of the arbitrators. \[18\] Furthermore, and in line with prior \textit{ad hoc} committee decisions to this effect, \[19\] the \textit{Eiser} committee explained:

The requirement that a tribunal be properly constituted is not confined to the time of the appointment of the arbitrators, i.e. the constitution of a tribunal. It is a continuing requirement. It begins with the constitution of the tribunal and ends only when the proceedings culminate in a decision or award making the tribunal functus officio. From the time of his or her appointment until he or she becomes functus officio an arbitrator must exercise independent judgment and be impartial. A failure in this regard would impact the proper constitution of the tribunal and form a ground for annulment under Article 52(1)(a). \[20\]

The \textit{Eiser} committee explained that, in view of the facts of the case:

- the respondent did not have knowledge of the arbitrator’s improper relationship and thus did not waive its objections to the independence and impartiality of the arbitrator;
- a third party would find a manifest appearance of bias on the part of the arbitrator and on his ability to objectively assess the facts; and
- the arbitrator’s failure to disclose his relationship with the claimant’s expert could have had a material effect on the outcome of the award.

Consequently, the tribunal concluded that annulment of the award was warranted pursuant to Article 52(1)(a) of the Convention. \[21\]

**MANIFEST EXCESS OF POWERS**

**OVERVIEW**

Article 52(1)(b) of the ICSID Convention allows a party to seek the annulment of an award on the ground that ‘the Tribunal has manifestly exceeded its powers’. Article 52(1)(b) entails a dual requirement: (1) that there be an excess of powers; and (2) that this excess of powers be manifest.

Recent \textit{ad hoc} committees remained in the line of previous annulment case law on the matter and confirmed that an excess of powers within the meaning of Article 52(1)(b) may take the following forms:

- lack of jurisdiction;
- failure to exercise jurisdiction when jurisdiction exists; and
- failure to apply the law applicable to the dispute. \[22\]

During the negotiations leading up to the ICSID Convention, Mr Aron Broches – one of the primary drafters of the Convention and founding Secretary General of ICSID – clarified that:

the expression ‘manifestly exceeded its powers’ concerned [sic] the cases referred to earlier as ultra petita, namely, where the Tribunal would have gone beyond the scope of agreement of the parties or would have decided points which had not been submitted to it or had been improperly submitted to it. \[23\]

Thus, because the parties’ agreement constitutes the paragon of the tribunal’s ability to adjudicate the dispute, any departure from the limits of that agreement amounts to an
excess of powers that may be sanctioned by the annulment of the award – provided, however, that that excess was ‘manifest’.

Most applicants for annulment continue to frequently invoke Article 52(1)(b) of the ICSID Convention as a ground for annulment. During the past two years alone, this ground has been invoked in at least 19 known applications for annulment leading to a decision on annulment. Only one such application was partially successful.[24]

EVOLUTION OF AD HOC COMMITTEE PRACTICE

Recent ad hoc committee practice demonstrates that there remains a debate regarding the precise meaning of the term ‘manifest’ and the degree of scrutiny it requires. Certain ad hoc committees considered that the term refers to an excess of power that is ‘obvious’, ‘clear’ or ‘self-evident’, that is to say one that does not require the committee to engage in a deep or complex analysis so as to be perceived.[25] The Teinver v. Argentina committee clarified in this regard that ‘the fact that a tribunal has relied to make its decision on tenable solutions adopted in several previous cases may be considered as an indication that an excess of powers is not manifest’. [26] The UAB v. Latvia committee further explained that ‘an ad hoc committee might have to review the record of the original Arbitration proceedings in order to assess the Parties’ submissions in the annulment proceedings in their proper procedural and factual context.’ [27]

Other ad hoc committees have endorsed the Soufraki v. UAE committee’s reasoning, pursuant to which ‘a manifest excess of power implies that the excess of power should at once be textually obvious and substantively serious.’ [28]

In RSM v. Saint Lucia, the annulment committee found a manifest excess of powers in a tribunal’s decision to dismiss a claim with prejudice for failure to provide a security for costs. The annulment committee first explained that there was no manifest excess of powers by the tribunal in its decision to discontinue the proceedings as a consequence of the claimant’s failure to provide security for costs, noting in this regard:

If a tribunal were unable to discontinue proceedings that had been suspended for refusal to provide security for costs, the case would remain in suspension without any prospect of the suspension ever being lifted. Such a result that keeps the parties in limbo indefinitely hardly comports with the function of a tribunal to manage proceedings in a way that provides fairness to both parties. [29]

However, the committee found a manifest excess of powers in the tribunal’s dismissal of the claims with prejudice, explaining that:

there is no reason why a claimant that has had proceedings dismissed for failing to provide security for costs should not, after paying the costs associated with those proceedings and properly providing security for costs in new proceedings, have its claims on the merits considered by another tribunal. [30]

CORRUPTION ON THE PART OF A MEMBER OF THE TRIBUNAL

Pursuant to Article 52(1)(c) of the ICSID Convention, a party may seek the annulment of an ICSID award on the ground that ‘there was corruption on the part of a member of the Tribunal’. To date, this ground for annulment has never been invoked by an applicant.
seeking the annulment of an ICSID award. Any such application would have to meet the high threshold needed to establish corruption. Indeed, the Convention's drafting and its drafting history suggest that corruption must be conclusively established and not merely inferred to constitute a ground for annulment. Furthermore, corruption in this context would be all the more difficult to establish considering that corrupt arrangements will, by definition, be kept secret from the opposing party.

SERIOUS DEPARTURE FROM A FUNDAMENTAL RULE OF PROCEDURE

OVERVIEW

Article 52(1)(d) of the ICSID Convention allows a party to seek the annulment of an ICSID award on the ground that 'there has been a serious departure from a fundamental rule of procedure'. This also constitutes a ground for annulment pursuant to the New York Convention and the UNCITRAL Model Law. The ICSID Convention's drafting history reveals that not all rules of procedure are fundamental within the Convention's meaning, but only those rules that 'comprise, for instance, the so-called principles of natural justice, e.g. that both parties must be heard and that there must be adequate opportunity for rebuttal'.

This interpretation has been followed by most recent ad hoc committee annulment decisions. Article 52(2)(d) has been frequently invoked by applicants (having been the ground for annulment examined in 16 decisions on annulment in the past two years alone). However, only one award has actually been annulled on this ground in recent years.

AD HOC COMMITTEE PRACTICE

ICSID ad hoc committees have applied a dual test in determining whether there has been a serious departure from a fundamental rule of procedure: first, the rule of procedure must be fundamental, and second, the procedural violation at issue must have been serious.

Although the ICSID Convention does not define the term ‘fundamental rule of procedure’, ICSID annulment committees have consistently determined that fundamental rules of procedure are those that pertain to principles of natural justice (i.e., rules that concern the essential fairness of the arbitral proceeding, such as the parties’ equal right to be heard, the principle of equal treatment of the parties, or the proper treatment of evidence). Notably, the Eiser v. Spain committee considered that ‘independence and impartiality of an arbitrator is a fundamental rule of procedure’ and explained that this means that:

the arbitrator has a duty not only to be impartial and independent but also to be perceived as such by an independent and objective third party observer. This duty includes the duty to disclose any circumstances that might cause his reliability for independent judgment to be reasonably questioned by a party.

Recent ad hoc committee practice has further confirmed that for an ICSID award to be annulled on the basis of Article 52(1)(d), the violation of the fundamental rule of procedure must have been serious. To date, ad hoc committees’ diverging interpretations of the scope of the seriousness standard under Article 52(1)(d) remains. Some ad hoc committees endorsed the interpretation adopted by the Wena Hotels committee, finding that the violation of a fundamental rule of procedure would only be considered as serious if the outcome of the arbitration would have been substantially different.

In recent years, some ad hoc committees have adopted a more flexible interpretation of the seriousness standard, finding that for a violation of a fundamental rule of procedure to be
serious within the meaning of Article 52(1)(d) of the Convention, the applicant must solely demonstrate that the violation had the potential to have a material effect on the outcome of the case.\footnote{41}

**FAILURE TO STATE REASONS ON WHICH AWARD IS BASED**

**OVERVIEW**

Article 52(1)(e) of the ICSID Convention provides that a party may seek the annulment of an ICSID award when ‘the award has failed to state the reasons on which it is based’. This ground for annulment stems from Article 48(3) of the Convention, which requires every ICSID award to ‘state the reasons upon which it is based’. However, neither Article 48(3) nor Article 52(1)(e) specifies the manner in which a tribunal’s reasons must be stated. The level of reasoning required to satisfy a tribunal’s obligation pursuant to Article 48(3) of the Convention has therefore been developed by ICSID \textit{ad hoc} committee practice. \textit{Ad hoc} committees have found an nullifiable failure to state reasons in the case of:

- a total absence of reasons for the award, including the giving of merely frivolous reasons; a total failure to state reasons for a particular point, which is material for the solution; contradictory reasons; and insufficient or inadequate reasons, which are insufficient to bring about the solution or inadequate to explain the result arrived at by the Tribunal.\footnote{42}

Similarly to requests for annulment on the ground of manifest excess of powers, applications for annulment based on alleged serious departures from a fundamental rule of procedure remain very frequent. Indeed, since 2018, this ground for annulment has been invoked in no fewer than 18 cases that led to a decision on annulment.\footnote{43} None of these applications culminated in a decision annulling the underlying award on the ground of Article 52(1)(e).

**AD HOC COMMITTEE PRACTICE**

Article 52(1)(e) of the ICSID Convention has repeatedly been interpreted as setting a minimum standard of review of the underlying arbitral award. \textit{Ad hoc} committees have explained in this regard that this ground for annulment does not pertain to the correctness or accuracy of the arbitral tribunal’s reasoning, but rather concerns whether the award enables the parties to understand how the tribunal reached its conclusions. Several \textit{ad hoc} committees have explained the standard of interpretation of Article 52(1)(e) of the Convention by reference to the \textit{MINE v. Guinea ad hoc} committee decision, which explained that ‘the requirement that an award has to be motivated implies that it must enable the reader to follow the reasoning of the Tribunal on points of fact and law. It implies that, and only that’.\footnote{44}

The \textit{Orascom v. Algeria} annulment committee further explained that, although Article 78(3) of the Convention requires that the tribunal states the reasons upon which it is based, it ‘does not require discussion of arguments which have no impact on the award’.\footnote{45} The tribunal is equally not required to state reasons that are convincing to the parties.\footnote{46}

**SETTING ASIDE OF NON-ICSID AWARDS: IMPORTANT PUBLIC POLICY CONSIDERATIONS**

Recent setting-aside proceedings of non-ICSID investment treaty awards by domestic courts confirm that domestic courts are particularly prone to set aside arbitral awards on public policy grounds when fraud or corruption are established.
For instance, in 2017, the Paris Court of Appeal set aside the *Belokon v. Kyrgyz Republic* award – which had been rendered by an arbitral tribunal constituted under 1976 UNCITRAL Arbitration Rules – finding that the investor had engaged in money laundering. The Court explained that the prohibition of money laundering reflects an international consensus, the violation of which constitutes a sanctionable breach of international public policy and warrants the setting aside of the underlying arbitral award.

Similarly, in November 2020, the Paris Court of Appeal set aside two International Chamber of Commerce arbitral awards rendered in favour of Sorelec (a French construction company) against Libya, in its €450 million dispute, on the ground that the awards resulted from a settlement agreement that was tainted by corruption. The Court recalled that the fight against corruption constitutes an objective that is pursued, *inter alia*, by the Organisation for Economic Co-operation and Development’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as well as by the United Nations Convention against Corruption. Thus, according to the Paris Court of Appeal, awards that result from corrupt arrangements violate international public policy and must be set aside.

ENFORCEMENT OF ICSID AWARDS

ANNULMENT AND OBLIGATION TO COMPLY WITH ICSID AWARDS

Pursuant to Article 53(1) of the ICSID Convention, an ICSID award ‘shall be binding on the parties and shall not be subject to any other remedy except those provided for’ in the Convention. Furthermore, Article 54(1) of the Convention obliges every ICSID contracting party to recognise ICSID awards as binding. This obligation becomes effective at the time the arbitral tribunal renders its award, notwithstanding the fact that the losing party may, in parallel, seek annulment of the award.

Article 52(5) of the Convention further provides that if the applicant for annulment ‘requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request’. The ad hoc committee may, if the circumstances so require, stay the opposing party’s efforts to enforce the award pending the conclusion of the annulment proceedings. Nevertheless, even when the ad hoc committee orders a stay of the winning party’s enforcement efforts, such an order does not alter the losing party’s obligation to comply with the award; it merely delays the investor’s ability to engage in collection proceedings for as long as the annulment proceedings are ongoing.

COMPLIANCE WITH ICSID AWARDS

In practice, contracting states to the ICSID Convention have largely abided by their obligation to comply with adverse ICSID awards that may have been rendered against them. Instances of non-compliance remain exceedingly rare. By way of example, although Bolivia had stated in no uncertain terms its intent to retreat from the investor-state dispute settlement regime, it has nonetheless announced its intention to honour its international obligations and has promptly complied with adverse awards rendered against it.

Other states have concluded settlement agreements several years after the issuance of the arbitral award – often after having sought annulment of the award. For instance, Egypt has settled both the *Southern Pacific Properties v. Egypt* and the *Siag v. Egypt* cases prior to the conclusion of ICSID annulment proceedings.
More rarely, some states have resisted any compliance, forcing the investor to embark on long-fought enforcement proceedings. In recent years, this position has been adopted by certain EU Member States in reaction to the judgment of the Court of Justice of the European Union in *Slovak Republic v. Achmea BV*, which ruled that Articles 267 and 344 of the Treaty on the Functioning of the European Union preclude investor-state arbitration clauses in intra-EU bilateral investment treaties (BITs) and, thus, that the investor-state arbitration clause contained in the Netherlands–Slovakia BIT was incompatible with EU law.

In the coming years, the question of compliance with intra-EU awards is likely to remain an essential challenge to the recognition and enforcement of ICSID awards. In January 2019, a group of EU Member States issued a declaration pursuant to which 'defending Member States will request the courts, including in any third country, which are to decide in proceedings relating to an intra-EU investment arbitration award, to set these awards aside or not to enforce them due to a lack of valid consent'.[54] Although Romania has signed the aforementioned declaration and has resisted for several years the enforcement of the *Micula* award rendered against it – even following its unsuccessful bid for annulment at ICSID – on the basis of the European Commission's request to the Romanian authorities not to pay the award on the ground that doing so would amount to an illegal state aid under EU law, Romania has allegedly recently agreed to pay the amount awarded to the investors.[55]

In the event that lack of compliance with adverse awards becomes more commonplace, more investors will turn to their home states in an attempt to seek diplomatic assistance to recoup amounts due. It is important to note in this regard that although Article 27 of the ICSID Convention prohibits the recourse to diplomatic protection in the context of a dispute that a foreign investor and a state have agreed to arbitrate at ICSID, diplomatic protection becomes available when a 'Contracting State [has] failed to abide by and comply with the award rendered'.

**RECOGNITION AND ENFORCEMENT OF NON-ICSID AWARDS: A BRIEF COMPARISON**

The recognition and enforcement of non-ICSID awards are governed by the New York Convention,[56] which sets forth in its Article V(1) the grounds on which recognition and enforcement of an award may be refused by the local courts of signatory states of the seat of the arbitration. Pursuant to the New York Convention, local courts have significantly more leeway to refuse the enforcement or recognition of an arbitral award.

For instance, domestic courts have, in recent years, refused to enforce investment treaty awards in which the arbitral tribunal had taken into account, for the purposes of calculating damages, actions that were outside the scope of its jurisdiction.[57]

**CONCLUSION AND CHALLENGES AHEAD**

Recent *ad hoc* committee practice confirms that the annulment of arbitral awards rendered under the aegis of the ICSID Convention remains an exceptional remedy, in which the applicant for annulment rarely prevails. Indeed, although the number of applications for annulment registered by ICSID steadily increases, very few arbitral awards are actually annulled. Nevertheless, although ICSID *ad hoc* committees have time and again demonstrated their commitment to the principle of finality of ICSID awards, they have also consistently stressed the importance of the ICSID annulment process to safeguard certain essential principles on which fair arbitral proceedings are based, such as the principle of equality of the parties, the procedural integrity of arbitral proceedings or the importance of the independence and impartiality of the members of the arbitral tribunal.
The coming years are likely to bring to the forefront certain challenges that will test the resilience of the ICSID annulment regime as it currently exists. In this regard, the question of the enforcement of intra-EU investment treaty awards remains an essential challenge to the recognition and enforcement of ICSID awards.

Endnotes

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4 Hussein Numan Soufraki v. The United Arab Emirates, ICSID Case No. ARB/02/7, Decision of the ad hoc Committee on the Application for Annulment of Mr Soufraki (5 Jun 2007) [Soufraki v. UAE], ¶ 23. ^Back to section

5 id., ¶ 127. ^Back to section

6 See ICSID, 'Updated Background Paper on Annulment for the Administrative Council of ICSID' (5 May 2016), ¶ 3. ^Back to section


8 RSM Production Corporation v. Saint Lucia, ICSID Case No. ARB/12/10, Decision on Annulment (29 Apr 2019) [RSM v. SaintLucia]. ^Back to section


11 See Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 [ICSID Convention], Article 52(4).  ~ Back to section


13 See ICSID, 'Updated Background Paper on Annulment for the Administrative Council of ICSID' (5 May 2016), ¶ 72.  ~ Back to section


15 See ICSID Convention, Articles 57 and 58. See also ICSID, 'Updated Background Paper on Annulment for the Administrative Council of ICSID' (5 May 2016), ¶¶ 79 and 80.  ~ Back to section


17 Eiser v. Spain, ¶ 45.  ~ Back to section

18 id., ¶ 175.  ~ Back to section


20 Eiser v. Spain, ¶ 168.  ~ Back to section

21 id., ¶ 253.  ~ Back to section


Teinver v. Argentina, ¶ 59.

UAB v. Latvia, ¶ 104.

Soufraki v. UAE, ¶ 40. See also Tenaris v. Venezuela, ¶ 74; Pey Casado v. Chile II, ¶ 198.

RSM v. Saint Lucia, ¶ 191.

id., ¶ 199.


UNCITRAL Model Law, Articles 34(2)(a)(iv), 36(1)(a)(iv).


37 Eiser v. Spain.  

38 See, e.g., Ol European Group v. Venezuela, ¶ 245; Orascom v. Algeria, ¶ 137.  

39 Eiser v. Spain, ¶ 239.  

40 See, e.g., Quiborax v. Bolivia, ¶ 115; Ol European Group v. Venezuela, ¶¶ 248 and 249.  

41 See, e.g., Eiser v. Spain, ¶¶ 252 to 254; Churchill Mining v. Indonesia, ¶ 180; Tenaris v. Venezuela, ¶ 100; Orascom v. Algeria, ¶ 142.  


44 MINE v. Guinea, ¶ 5-08 and 5.09. See also Orascom v. Algeria, ¶ 166; Teinver v. Argentina, ¶ 209; Ol European Group v. Venezuela, ¶¶ 318, 361; Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited, ICSID Case No. ARB/10/20, Decision on Annulment (22 Aug 2018) [Standard Chartered v. Tanzania], ¶ 605.  

45 Orascom v. Algeria, ¶ 164.
See, e.g., *Orascom v. Algeria*, ¶ 165; *Suez v. Argentina*, ¶ 154.


This is notably demonstrated by Ecuador's decision, in 2009, to withdraw from the ICSID Convention and subsequently denounce its bilateral investment treaties [BITs].


After Bolivia unsuccessfully sought to annul the ICSID award rendered against it in the *Quiborax* case, it confirmed that it had honoured the award and paid a discounted amount of the award after the investor had agreed to forego 20 per cent of the base award, 50 per cent of the post-award interest and all the associated costs. See L E Peterson, ‘Payment of investment treaty arbitration awards: an update on developments in Latin America’, IAREporter (12 Jun 2018), available at [https://www.iareporter.com/articles/payment-of-investment-treaty-arbitration-awards-an-update-on-developments-in-latin-america/](https://www.iareporter.com/articles/payment-of-investment-treaty-arbitration-awards-an-update-on-developments-in-latin-america/).


56  Arbitral awards rendered pursuant to ICSID Additional Facility Rules are also subject to the recognition and enforcement regime laid out in the New York Convention.

57  Bolivarian Republic of Venezuela v. Rusoro Mining Ltd., Judgment of the Paris Court of Appeal, Case No. RG 16/20822 (29 Jan 2019). Rusuro has filed a motion to the Paris Court of Cassation seeking to quash the Court of Appeal’s decision.